



Status Report on the Use of Alternative Dispute Resolution in Environmental Protection Agency Enforcement and Site-Related Actions

(Through Fiscal Years 1997 & 1998)

Contents

EXECUTIVE SUMMARY	1
OVERVIEW OF EPA’S ENFORCEMENT ADR PROGRAM	3
DEVELOPMENTS IN ADR	5
FEDERAL LAW AND POLICY	5
1. Administrative Dispute Resolution Act	5
2. Alternative Dispute Resolution Act	5
3. Civil Justice Reform Act	5
4. The Executive Order on Civil Justice Reform	6
5. Department of Justice Guidance on the Use of ADR	6
6. National Performance Review	6
7. Guidance on the Use of Alternative Dispute Resolution in EPA Enforcement Cases	6
ADR PROGRAM INITIATIVES	6
1. Background: The History of Enforcement ADR Program Initiatives	6
2. Use of ADR in Superfund Remedy Disputes	7
3. Allocations Pilot	7
4. Brownfields Facilitation Pilots	7
OFFICE OF ADMINISTRATIVE LAW JUDGES’ ADR INITIATIVE	8
FINANCIAL SUPPORT FOR USE OF ADR	9
ADR TRAINING	9
ADR SPECIALISTS	11
ADR SPECIALISTS ROSTER	13
SUMMARY OF ADR USE IN ENFORCEMENT PROGRAMS	15
CASE DESCRIPTIONS: ADR Cases Active During FY 97 or FY 98	21
Region 1	21
Region 2	32
Region 3	34
Region 4	42
Region 5	48
Region 6	54
Region 7	55
Region 8	56
Region 9	63
Region 10	66
CONSENT DECREES THAT INCLUDE ADR PROVISIONS	67
SAMPLE CONSENT DECREES THAT INCLUDE ADR PROVISIONS	71
EXPLANATION OF TERMS	77
ADR PROCESS	77
KEY TO ABBREVIATIONS	78

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EXECUTIVE SUMMARY

Both the Administrative Dispute Resolution Act (ADRA) and enforcement alternative dispute resolution (ADR) guidance issued by the Environmental Protection Agency (EPA) encourage the use of ADR mechanisms where a prompt and fair resolution of a site-specific dispute might result.

During the FY 97/98 reporting period, Congress passed two laws aimed at promoting further use of ADR. The Administrative Dispute Resolution Act of 1996 amended the ADRA and provided for the creation in September 1998 of the Interagency ADR Working Group (IADRWG), which is tasked with encouraging the use of ADR by federal agencies. Congress also passed the Alternative Dispute Resolution Act of 1998, which requires each United States district court to adopt local rules authorizing the use of ADR in civil actions and to make qualified neutrals available to the parties to those actions.

The use of ADR in enforcement cases reached new highs during the FY 97/98 period, extending a period of consistent growth in ADR use that began in the early 1990s. ADR use was initiated in 72 cases in FY 97 and in 116 cases in FY 98. Over the history of the program, approximately 43 percent of all ADR use has been in cases involving the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, the Superfund law), with less frequent use in cases involving other statutes, including the Clean Water Act, Clean Air Act, and Resource Conservation and Recovery Act. In recent years, however, an emphasis on increasing the awareness and use of ADR outside the Superfund arena and the creation of the Office of Administrative Law Judges' ADR

initiative for administrative penalty cases have led to an increase in the number of non-CERCLA ADR cases. In FY 97, non-CERCLA cases constituted a majority of new cases initiated for the first time.

More than 70 percent of all enforcement ADR cases have involved the use of mediation. Other commonly used ADR processes are convening (13 percent) and facilitation (11 percent). The issues to which these ADR processes have been applied have historically related primarily to Superfund allocation, cost recovery, and RD/RA negotiations, but as the program has diversified, other issues have become more common. The issue with the most notable growth in the FY 97/98 reporting period is penalty disputes, which are increasingly being addressed using ADR as the Office of Administrative Law Judges' initiative grows.

OVERVIEW OF EPA'S ENFORCEMENT ADR PROGRAM

The Environmental Protection Agency (EPA, or the Agency) utilizes alternative dispute resolution (ADR) to facilitate the settlement of conflicts related to environmental enforcement actions and site-related disputes. It is the policy of the Agency to consider the use of ADR in every dispute and to use ADR whenever it may result in a more efficient or equitable resolution ("Final Guidance on Use of Alternative Dispute Resolution Techniques in Enforcement Actions," August 1987).

The Agency has utilized ADR to facilitate the settlement of civil actions under a broad range of authorities, including the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Resource Conservation and Recovery Act (RCRA), Clean Water Act (CWA), and Clean Air Act (CAA). Early ADR efforts primarily involved CERCLA cases, but recently the use of ADR in non-CERCLA cases has become equally common. Civil actions have been assisted primarily through convening and mediation neutrals, though other ADR processes have been used. Finally, EPA has included ADR processes in the dispute resolution provisions of administrative and judicial settlement documents.

Responsibility for the Enforcement ADR Program was delegated to the Assistant Administrator for Enforcement (now the Office of Enforcement and Compliance Assurance) in June 1990. In November 1990, the Office of Enforcement adopted an Agency-wide ADR program that made the routine consideration and appropriate use of mediation, arbitration, and other ADR processes standard operating procedure for resolving civil actions.

The Office of Enforcement and Compliance Assurance (OECA), through the Agency's Enforcement ADR Program, provides assistance to EPA headquarters and regional offices, the Department of Justice (DOJ), state and local governments, and private parties for the use of ADR in environmental enforcement actions and site-related disputes. This assistance includes provision of neutral services, training in the use of ADR, technical assistance in the review of potential cases and preparation of required procurement documents, identification of qualified ADR practitioners, payment of government expenses related to the use of ADR for environmental enforcement cases, and publication of a periodic status report on Agency-wide ADR activities.

*For information about the EPA Enforcement ADR program, contact David C. Batson, Senior ADR Specialist, (202) 564-5103; Lee Scharf, ADR Specialist and Program Coordinator, (202) 564-5143; or any Regional ADR Specialist.
See page 13 for the ADR Regional Specialists Roster.*

DEVELOPMENTS IN ADR

FEDERAL LAW AND POLICY

1. Administrative Dispute Resolution Act

The 1990 Administrative Dispute Resolution Act (ADRA), Pub. L. No. 101-552 (codified as 5 USC § 571 *et seq.*) encourages each federal agency and department to use ADR techniques, including mediation, conciliation, and arbitration, to resolve public conflicts over which it has jurisdiction. The statute requires that each federal agency and department designate a “Dispute Resolution Specialist” to implement ADRA provisions within that agency or department, and provide dispute resolution training for its staff. The statute also provides guidelines for procuring dispute resolution assistance, authorizes and sets parameters for the use of arbitration, and provides for the confidentiality of ADR procedures. The Assistant Administrator for Enforcement and Compliance Assurance is EPA’s designated Dispute Resolution Specialist.

The ADRA was significantly amended by the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320. Perhaps the most significant of these amendments provides for the creation of an interagency committee to encourage and facilitate the use of ADR by federal agencies and to develop procedures that permit those agencies to obtain the services of neutrals on an expedited basis. In response to the 1996 amendments, President Clinton, in a presidential memorandum dated May 1, 1998, directed Attorney General Reno to convene the Interagency Alternative Dispute Resolution Working Group (IADRWG), which has begun working to fulfill its statutory mandate. The Enforcement ADR Program has played an important role in supporting the work of the

IADRWG’s Civil Enforcement Section, providing examples of successful ADR use and information on how to develop an ADR program, and consulting with personnel from agencies designing new ADR programs. Further information about the IADRWG is available on the Internet at <http://www.financenet.gov/iadrwg.htm>. The amendments also included a provision explicitly exempting communications falling within the confidentiality provisions of the ADRA from disclosure in response to requests submitted under the Freedom of Information Act when those communications pass through the hands of a neutral.

2. Alternative Dispute Resolution Act

The Alternative Dispute Resolution Act of 1998, Pub. L. No. 105-315 (codified at 28 USC § 651 *et seq.*) requires each United States district court to adopt local rules authorizing the use of alternative dispute resolution processes in civil actions and to make qualified and trained neutrals available for use by the parties. Each court must make available to litigants in all civil cases at least one ADR process, and the local rules must require litigants to consider the use of an ADR process at an appropriate stage in the litigation (although a court may exempt cases or categories of cases from this requirement when the use of ADR would not be appropriate). In addition, a court may elect to order the use of mediation or early neutral evaluation, and may order arbitration with the consent of the parties.

3. Civil Justice Reform Act

The Civil Justice Reform Act of 1990 (Pub. L. No. 101-650) establishes as federal policy the use of ADR to facilitate civil actions and other disputes involving the United States. Among other initiatives, the Act established pilot programs in the use of ADR in 15 district courts and

authorized federal judges to require the use of ADR processes in case management procedures.

4. The Executive Order on Civil Justice Reform

The Executive Order on Civil Justice Reform (Executive Order No. 12988, 1996) dictates, in part, that attorneys representing the federal government utilize ADR to promote the prompt and proper settlement of public disputes. Specifically, the Executive Order requires that counsel for the United States attempt settlement, including advising opposing counsel of the potential for ADR use in appropriate matters prior to the initiation of litigation. When reviewing, promulgating, or developing proposals for new legislation, government agencies should, among other requirements, specify whether dispute resolution techniques are appropriate in enforcement provisions. Executive Order No. 12988 superseded Executive Order No. 12778 (1991), which also addressed the use of ADR in civil justice reform.

5. Department of Justice Guidance on the Use of ADR

To implement the 1991 Executive Order on Civil Justice Reform (Executive Order No. 12778), the Department of Justice issued “Guidance on the Use of Alternative Dispute Resolution for Litigation in the Federal Courts” in August 1992. This guidance document specifies that government attorneys should use ADR whenever the use of ADR is likely to contribute to a prompt, fair, and efficient resolution of a civil action. The guidance document also discusses ADR processes, the characteristics of cases suitable for ADR, and procedures for the selection of neutral parties for dispute resolution. To make clear the Department of Justice’s commitment to greater use of alternative dispute resolution, case identification criteria for ADR were published in the Federal Register on June 17, 1996.

6. National Performance Review

The National Performance Review (NPR), conducted for the Office of the President during 1993-94, strongly emphasizes the use of ADR by federal agencies as a tool to increase the efficiency of government practice. In particular, the NPR recommends that federal agencies establish policies to use ADR in all appropriate federal disputes and train all personnel in the effective use of ADR.

7. Guidance on the Use of Alternative Dispute Resolution in EPA Enforcement Cases

It is the stated policy of the Environmental Protection Agency to utilize alternative dispute resolution mechanisms in all Agency enforcement actions where a more prompt and fair resolution of a dispute could potentially result (“Final Guidance on the Use of Alternative Dispute Resolution in EPA Enforcement Cases,” August 1987). This ADR enforcement guidance establishes that it is EPA policy to utilize ADR in the resolution of appropriate civil enforcement cases, describes some applicable types of ADR and the characteristics of cases that might call for the use of ADR, and formulates case selection and neutral selection procedures, as well as neutral qualifications and procedures for the management of cases in which some or all issues are submitted for alternative dispute resolution.

ADR PROGRAM INITIATIVES

1. Background: The History of Enforcement ADR Program Initiatives

To test the use of mediation in civil actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Office of Regional Counsel (ORC) in Region 5 successfully completed a pilot program in FY 1991. The pilot included cost recovery and remedial design/remedial action cases. The mediations were funded by all parties in the disputes, including EPA. Settlement agreements were reached in five of the six cases. Region 5

ORC concluded that with proper evaluation, the use of mediation could and should be expanded in Superfund cases and also applied to Resource Conservation and Recovery Act (RCRA) cases at both the state and federal level.

Beginning in FY 1993 and 1994, EPA conducted the first of three rounds of Superfund Reforms to explore options for making administrative improvements to the Superfund program. One of the main objectives of the reforms was to pilot programs that would increase the fairness of enforcement activities and reduce the transaction costs of the Superfund program. As part of the initiative, the Agency conducted a pilot using professional neutrals to assist private parties in resolving site cost allocation disputes. Allocation efforts at over 20 Superfund sites were supported by this effort, which included consultation on the use of ADR and funding for neutral services.

2. Use of ADR in Superfund Remedy Disputes

During FY 1994, the Agency initiated a pilot to explore the use of ADR in facilitating public participation in Superfund site remedy selection and implementation efforts. The Boston Regional Office, with ADR assistance from the Office of Enforcement and Compliance Assurance (OECA) and the State of Massachusetts, established a facilitation program to assist discussions with the public and the regulated community. Facilitation was used at two Superfund sites to develop a scope of work for remedial design efforts and a remedy implementation plan. For more information, contact Ellie Tonkin, Region 1 ADR Specialist, at (617) 918-1726.

3. Allocations Pilot

During FY 1994, the Agency undertook a major legislative effort to revise CERCLA. The proposed legislation (HR 3916) established a comprehensive system for allocating responsibility for site costs among private and public parties at Superfund sites, which would establish the basis for settlement efforts with the

United States. Though the proposed legislation was not enacted, much of the second round of Superfund Reforms explored options for incorporating aspects of the proposed legislation into Agency practice. One of these initiatives was a pilot of the allocation system contained in HR 3916 to evaluate the fairness of the system and its effectiveness in reducing transaction costs. Under the pilot, PRPs at nine sites were given the opportunity to nominate other parties, then selected a neutral allocator to conduct a non-binding, out-of-court process resulting in an allocation report. The report assigned shares of responsibility to PRPs based on a number of equitable factors. Parties were then offered an opportunity to settle with EPA based on the shares allocated to them by the neutral allocator. Under the pilot's allocation process, EPA is responsible for 100% of the orphan share, which includes the shares of defunct or insolvent parties. Participating parties generally believed that the use of neutrals was beneficial to the process, and the neutrals often served not only as allocators, but also as mediators encouraging settlement.

4. Brownfields Facilitation Pilots

On May 13, 1997, Vice President Al Gore announced the Administration's Brownfields National Partnership Action Agenda. Included in the Agenda is the use of ADR to expedite the cleanup and sustainable reuse of brownfield properties. A brownfield is a site, or portion thereof, that has actual or perceived contamination and an active potential for redevelopment or reuse. The ADR tool of facilitation has already been successfully used at a number of EPA's brownfield pilot sites. For example, in Dallas, Texas, residents used a facilitator to develop and coordinate a multi-level outreach and communications strategy, ensuring the involvement and input of business, industry, federal, state, and local governments, communities, regulators, and developers in the brownfield pilot work. Another brownfield facilitation took place in New Orleans, Louisiana, where 65 percent of the city's population is African-American, most living within a "Chemical Corridor" through which hazardous waste is

transported. Here a facilitator was used to identify stakeholders and ensure that all were fairly represented during pilot activity discussions. The Agency has begun to build upon these successes by selecting nine brownfield pilot sites to use facilitation in FY 99. For more information contact Lee Sharf, Office of Site Remediation Enforcement, at (202) 564-5143.

OFFICE OF ADMINISTRATIVE LAW JUDGES' ADR INITIATIVE

In FY97, the Office of Administrative Law Judges (OALJ) tried ADR on about 50 cases to test its value as a method for concluding administrative enforcement cases pending before OALJ. The test proved successful. Consequently, OALJ has expanded its use of ADR, and OALJ ADR has now become the ADR process EPA enforcement personnel participate in most frequently.

The form of ADR that OALJ utilizes is mediation. One of the office's 10 judges serves as the neutral. If the ADR process does not produce a settlement, the case is transferred to another OALJ judge who presides over litigation leading to a decision that resolves the case. There is no communication about the case between the judge who mediates and the judge who presides over the litigation; the mediation proceedings are held in confidence by the neutral judge.

OALJ offers ADR in cases under all the environmental statutes that come before it. These statutes include the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substances Control Act, Federal Insecticide, Fungicide, and Rodenticide Act, and the Emergency Planning and Community Right-to-Know Act. Most of the cases coming before the office are governed by EPA's procedural regulations at 40 CFR Part 22. Section 18 of this part was recently amended to facilitate the use of ADR (40 Fed. Reg. 40,176, 40,182 (1999)).

OALJ hoped that the use of ADR would speed the office's processing of cases, since litigation is usually a lengthy procedure. Each of the normal steps

leading to the presiding judge's decision — making motions, filing briefs, convening a hearing, examining and cross-examining witnesses — takes time and effort. By contrast, mediation — encouraging the parties to exchange views informally and develop a compromise resolution that answers some of the basic interests of both parties — is generally much faster and easier.

As OALJ has continued to use mediation, a second benefit has appeared: concluding a case partly through an environmentally beneficial project undertaken by the respondent. In a case that is litigated, usually the only sanction the judge can impose on the respondent is a civil penalty. In mediation, however, the parties can agree that the civil penalty ordinarily payable will be reduced if the respondent implements a project that benefits the environment and that is beyond what is required by environmental law. Such a project is known officially as a supplemental environmental project (SEP).

Normally the respondent spends significantly more money on the SEP than the reduction it receives in the civil penalty. Thus the environment is improved more than it would be even if the entire civil penalty that the respondent would otherwise pay were applied to environmental purposes. In fact, most civil penalties go into the federal treasury without any earmarking for environmental purposes, so an additional advantage of SEPs is that they target some of the benefits of the remedy agreed to in a settlement to the area that was affected by the violation. Respondents often agree to SEPs because all the dollars spent go to improving some aspect of the respondent's own physical environment.

A recent case illustrates several recurrent themes in OALJ ADR cases. This case involved a governmental respondent. EPA and local inspections of the respondent's facilities led EPA to issue several complaints alleging numerous RCRA violations, and demanding civil penalties approaching \$1 million and the implementation of extensive corrective measures. The RCRA violations concerned Subtitle C hazardous waste management and Subtitle I underground storage tank provisions, including record keeping, reporting, corrosion protection, closure, corrective action, and training requirements.

The judge serving as the neutral worked entirely through teleconferences. When the ADR began, the positions of the parties seemed unbridgeable, and shared little common ground. The neutral judge started by focusing the parties' attention on possible points of agreement that could be extracted from this limited common ground. To keep the discussions moving, the neutral judge scheduled weekly teleconferences, and regularly assigned the parties preparatory work to be done for the next week's teleconference.

Agreement on minor points arising out of the parties' limited common ground was eventually achieved. This achievement created a sense of joint purpose between the parties. According to the later testimony of the parties themselves, once imbued with this sense of joint purpose, they each stopped focusing on advocating their own position, and started to concentrate on understanding the goals of the other side and addressing its concerns. Here the parties were aided by periodic evaluations by the neutral judge of the merits of their respective positions.

After almost half a year of teleconferencing, the parties agreed to settlements concluding all the enforcement cases. The civil penalties that were agreed to totaled less than \$100,000, but the respondent also agreed to implement corrective measures that would improve significantly its hazardous waste handling and storage practices. The respondent came to view adoption of these corrective measures as representing very much its own self-interest. Thus the ADR process both saved the parties the time and expense of a litigated hearing, and also produced a result that each side saw as answering its basic concerns.

FINANCIAL SUPPORT FOR USE OF ADR

Since fiscal year 1990, the Office of Enforcement and Compliance Assurance and its predecessors have dedicated funds to provide

ADR training for EPA staff, to support regional offices considering the use of ADR, and to pay for the government's share of ADR professional services in Superfund cases. The ADR Fund is accessible through the ADR specialists at EPA headquarters and the regions. Beginning in FY 1996, funding for retaining the services of ADR professionals in Superfund cases and ADR staff resources was included in the budget of EPA regional offices. Funds for the use of ADR professionals in enforcement actions under other statutory authorities are available on a case-by-case basis. For additional information, contact the EPA Senior ADR Specialist, David Batson, at (202) 564-5103, or the appropriate regional ADR specialist.

ADR TRAINING

Both introductory and advanced training programs in the use of ADR in environmental enforcement matters and site-related disputes are provided annually to EPA regional and headquarters offices.

ADR SPECIALISTS

The Environmental Protection Agency ADR Program is staffed by a dedicated group of ADR professionals at headquarters in Washington, D.C. and each regional office who are trained to support the use of ADR in Agency actions. A wide range of consultation and support services is available from the ADR program staff, including provision of neutral services, training in the use of ADR, technical assistance in the review of potential cases and preparation of required procurement documents, payment of government expenses related to the use of ADR for environmental enforcement cases, and publication of a periodic status report on Agency-wide ADR activities.

David C. Batson

Mr. Batson serves as the Senior ADR Specialist for enforcement and site-related matters. Mr. Batson coordinates ADR Program implementation within the Agency and serves as a neutral consultant and convener regarding the use of ADR. Mr. Batson also serves as a mediator and allocation specialist in appropriate matters and as a facilitator in public policy dialogues and intra-agency disputes. He has extensive training and experience as an ADR professional with public and organizational disputes. Mr. Batson is available for consultation on the use of ADR generally and in specific cases. He can be reached at (202) 564-5103, by fax at (202) 564-0093, or by electronic mail at batson.david@epa.gov (EPA headquarters/mail code 2273A).

V. Lee Scharf

Ms. Scharf serves as the ADR Program Coordinator for enforcement and site-related matters. As Program Coordinator she consults with Regional ADR Specialists on general ADR issues as well as ADR implementation. She manages a pilot designed to use facilitation at brownfield sites. Ms. Scharf serves as a neutral consultant and convener regarding the use of ADR and is a trained community mediator and facilitator. Ms. Scharf also serves as a resource for ADR contracts issues, ADR policy evaluation, and case-specific conflict analysis. She can be reached at (202) 564-5143, by fax at (202) 564-0091, or by electronic mail at scharf.lee@epa.gov (EPA headquarters/ mail code 2273A).

Regional ADR Specialists

Regional ADR Specialists are located in each regional EPA office to provide consultation and support on the use of ADR in regional enforcement and site-related actions. Regional ADR Specialists are available for consultation on the use of ADR generally and in specific cases, and for service as ADR neutrals in appropriate cases. A list of ADR Specialists is included at the end of this report. The ADR Specialists meet monthly, by telephone, to discuss the use of ADR in Agency enforcement actions. EPA staff working on enforcement cases are welcome to join in the monthly telephone sessions. Please contact your local ADR Specialist for further information.

ADR SPECIALISTS ROSTER

OFFICE	NAME	PHONE #	FAX #
Region 1	Ellie Tonkin	617/ 918-1726	918-1809
	Marcia Lamel	918-1778	918-1809
	Doug Thompson	918-1543	918-1505
	Dan Winograd	918-1885	918-1809
Region 2	Tom Lieber	212/ 637-3158	637-3115
	Janet Feldstein	637-4417	637-4429
Region 3	Pat Hilsinger	215/ 814-2642	814-2601
	Kathy Hodgkiss	814-3151	814-3001
Region 4	Lisa Ellis	404/ 562-9541	562-9486
Region 5	John Tielsch	312/ 353-7447	886-7160
	Doug Ballotti	886-4752	353-9306
	Jeffrey Clay	353-6261	353-9306
Region 6	Jim Dahl	214/ 665-2151	665-2182
	Carl Bolden	665-6713	665-6660
	Arnie Ondarza	665-6790	665-6660
Region 7	Cheryle Micinski	913/ 551-7274	551-7925
	Phil Page	551-7580	551-7925
Region 8	Maureen O'Reilly	303/ 312-6402	312-6409
	Karen Kellen	312-6518	312-6953
Region 9	Kim Muratore	415/ 744-2373	744-1917
	Marie Rongone	744-1313	744-1041
	Allyn Stern	744-1372	744-1041
Region 10	Ted Yackulic	206/ 553-1218	553-0163
HQ Enforcement ADR Team			
ADR Specialist	David Batson	202/ 564-5103	564-0093
ADR Coordinator	Lee Scharf	564-5143	564-0091
PO, Resolve Contract	Debbie Dalton	260-5495	260-5478

SUMMARY OF ADR USE IN ENFORCEMENT PROGRAMS

The use of ADR in EPA enforcement cases increased significantly during the FY 97/98 period, extending a period of consistent growth in ADR use that began in the early 1990s. This growth is attributable to an increase in the capacity of the ADR program as ADR specialists were recruited to regional ADR teams and trained during the 1990s, an increase in awareness among EPA enforcement personnel of the availability and effectiveness of ADR techniques, and the rapid growth of the Office of Administrative Law Judges' ADR initiative for administrative penalty cases. Figure 1 shows the number of cases in which ADR use was initiated for the fiscal years 1987-1998. In FY 97, ADR use was initiated in 72 cases, while 116 ADR cases were initiated in FY 98. Case descriptions for each of the 113 non-ALJ enforcement ADR cases that were active during the FY 97/98 period are included in the next section of this report. Case descriptions for ALJ administrative penalty mediations are not included in this report.

Until the last few years, the enforcement ADR program centered predominantly on the use of ADR

Success Story

GE-Pittsfield : Complex Environmental Dispute Resolved

A recent case from Region 1 illustrates the tremendous potential of ADR in the management of complex environmental disputes. The case concerned the contamination of the Housatonic River and numerous sites in Pittsfield, Massachusetts with polychlorinated biphenyls (PCBs) from a General Electric Co. (GE) facility. Neutral third parties were used for four distinct purposes, making the case a virtual showcase of ADR techniques available to prevent or resolve environmental conflict:

- A team of mediators assisted GE, EPA, and eight other government agencies in confidential settlement negotiations that resulted in a consent decree.
- A neutral facilitator manages the Citizens' Coordinating Council, an ongoing public forum aimed at providing meaningful public input into matters relating to the cleanup.
- A panel of neutral experts will comment on specified technical issues as part of a peer review process included in the consent decree.
- A mediation provision designed to help the parties resolve, at the earliest possible stage, disputes arising during performance of the cleanup is included in the consent decree.

GE agreed under the consent decree to clean up portions of the Housatonic River, GE's 250-acre property in Pittsfield, filled oxbow areas, Silver Lake, Unkamet Brook, Allendale School, and flood plain properties along the Housatonic. GE will also fund a natural resource damage package and clean up and revitalize the 250-acre Pittsfield property in one of the largest brownfields investments in the country. The total cost of GE's commitments under the settlement is expected to be greater than \$200 million.

Figure 1: ADR Cases Initiated, 1987-1998

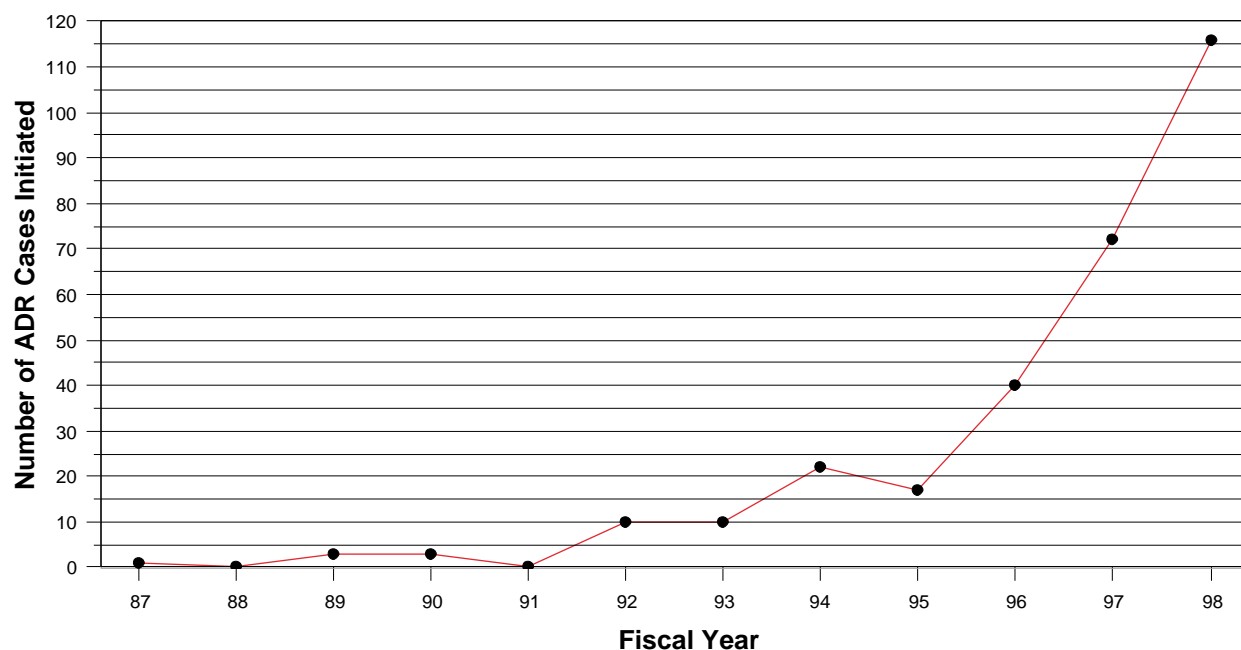
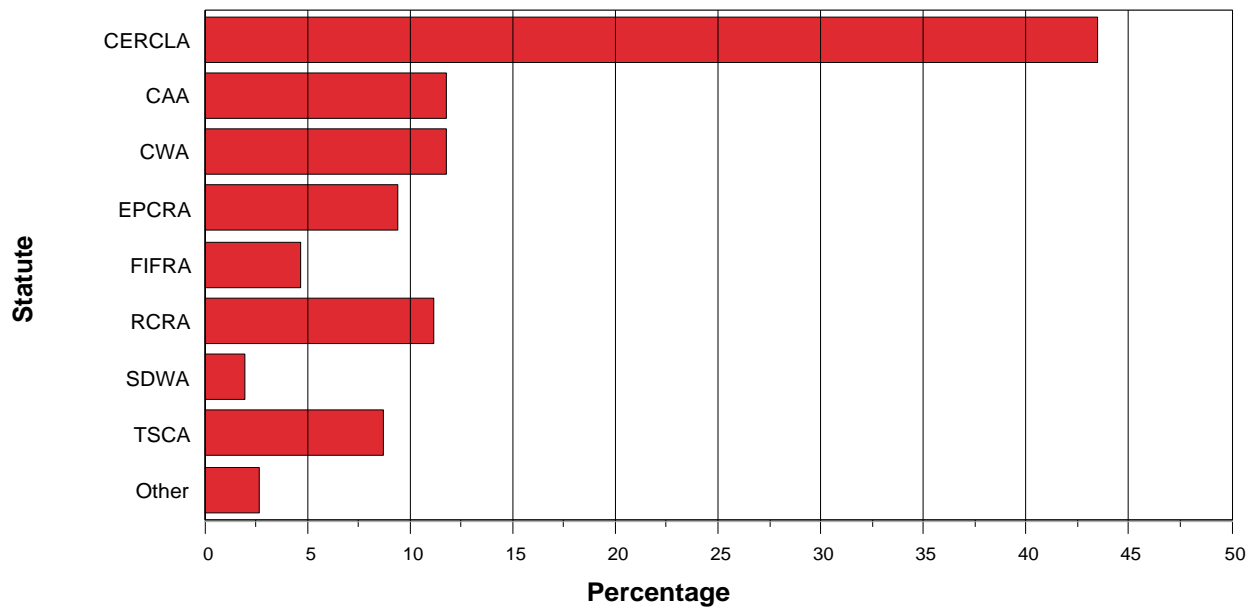


Figure 2: ADR Cases by Statute, 1987-1998



in Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cases. Figure 2, which shows the percentage of ADR cases involving each environmental statute, reflects this historical fact, showing that CERCLA cases constitute about 43 percent of all cases in which ADR has been used. The most common ADR cases with non-CERCLA subject matter have been Clean Water Act (12 percent), Clean Air Act (12 percent), and Resource Conservation and Recovery Act (11 percent) cases. Use of ADR in cases concerning the Emergency Planning and Community Right-to-Know Act, the Toxic Substances Control Act, and the Federal Insecticide, Fungicide, and Rodenticide Act each make up between five and 10 percent of the historical total, and the Safe Drinking Water Act makes up two percent. In addition, there have been single ADR cases concerning several other statutes (these are included in the “Other” category in Figure 2): the Freedom of Information Act, the National Environmental Policy Act, and the Oil Pollution Act.

Over the last several years, an effort has been

Success Story

Helen Kramer Landfill: Carrot and Stick Approach Gets Results

The Helen Kramer Landfill, located in Mantua, New Jersey, accepted both industrial and municipal wastes until 1981, when it was closed by court order. Subsequent studies revealed that the landfill was contaminating local groundwater with both heavy metals and volatile organic compounds. EPA remediated the site, building a multi-layer cap, a slurry wall around the landfill, and a leachate collection and treatment system, then sought to recover its cleanup costs from the parties responsible for the contamination.

After six years of complex litigation involving EPA Region 2, the State of New Jersey, and more than 300 potentially responsible parties (PRPs), including large industrial generators, *de minimis* generators, municipalities, and transporters, the PRPs were still so divided that they could not begin to participate in meaningful settlement discussions. The litigation was further complicated by PRP claims against their insurers and a large “orphan share” of liability attributed to defunct or insolvent PRPs. At this point, an EPA convener helped a large group of PRPs to organize and agree to hire two experienced mediators, who were instrumental in bringing various factions into the settlement process.

Instead of putting the litigation on hold while participating in mediation, EPA chose to continue to litigate aggressively during the mediation process. This strategy proved successful, as a global settlement was concluded in a relatively short time. The settling PRPs agreed to pay EPA \$96 million of the \$123 million it spent on the remediation process, to pay New Jersey almost \$10 million of its response costs, and to pay future operation and maintenance costs for the landfill. In addition, the settling parties agreed to purchase and conserve 151 acres of wetlands and pay New Jersey \$900,000 in compensation for damage to natural resources.

Success Story Murray Smelter: ADR Clears Way for Redevelopment

The Murray Smelter Working Group, with the help of facilitators, successfully integrated site redevelopment plans with the Superfund remedy selection process for the Murray Smelter Brownfield site. This former Asarco lead smelter site, located across the street from Murray City Hall, was contaminated with lead and arsenic from smelter operations. The smelter ceased operations in 1949, and the site became the home of several businesses and two trailer parks.

The working group, which consisted of representatives of EPA Region 8, the Utah Department of Environmental Quality (UDEQ), Asarco, owners of properties and businesses on the site, and Murray City, engaged in a collaborative decision-making process designed to benefit both the redevelopment and cleanup efforts. Facilitators Bernie Mayer and Louise Smart were deeply involved, speaking with individual parties, helping the group define its purpose and procedures, designing meeting agendas, facilitating meetings, and writing meeting summaries. One measure of the success of the resulting process is that each member of the working group agreed to contribute something of value to a plan that would benefit them all.

The final plan calls for redevelopment of the site for commercial and retail uses, including movie theaters, restaurants, and a hospital administration complex. Early determination of the site's future use allowed EPA and Asarco to tailor the cleanup to the planned use, and the parties agreed to work together to build a new road through the site. Asarco will construct the road's base, using it as an on-site repository for contaminated soils, the property owners will contribute the land and pay for curbs, gutters, and sidewalks, and the city will pave the road and construct a utility and storm drain system. The cleanup and road will enhance both property values and the city's tax base. The property owners will sell their land to a developer, who will receive from EPA the protection from future Superfund liability offered by a prospective purchaser agreement.

made to increase awareness of ADR as an option among both the regulated community and regulatory enforcement personnel, and to help them identify cases as candidates for ADR. The result has been an increasing diversity of subject matter among ADR cases. Figure 3 divides all ADR cases into two categories, CERCLA cases and all other cases. The number of non-CERCLA ADR cases increased steadily in the mid-1990s, slowly approaching the level of CERCLA cases. In FY 97 and FY 98, as EPA enforcement personnel began to participate in large numbers of administrative penalty case mediations in the Office of Administrative Law Judges' ADR program, the number of non-CERCLA ADR cases grew to more than twice that of CERCLA ADR cases.

Figure 3: ADR Cases Initiated, 1987-1998
CERCLA vs. Other Statutes

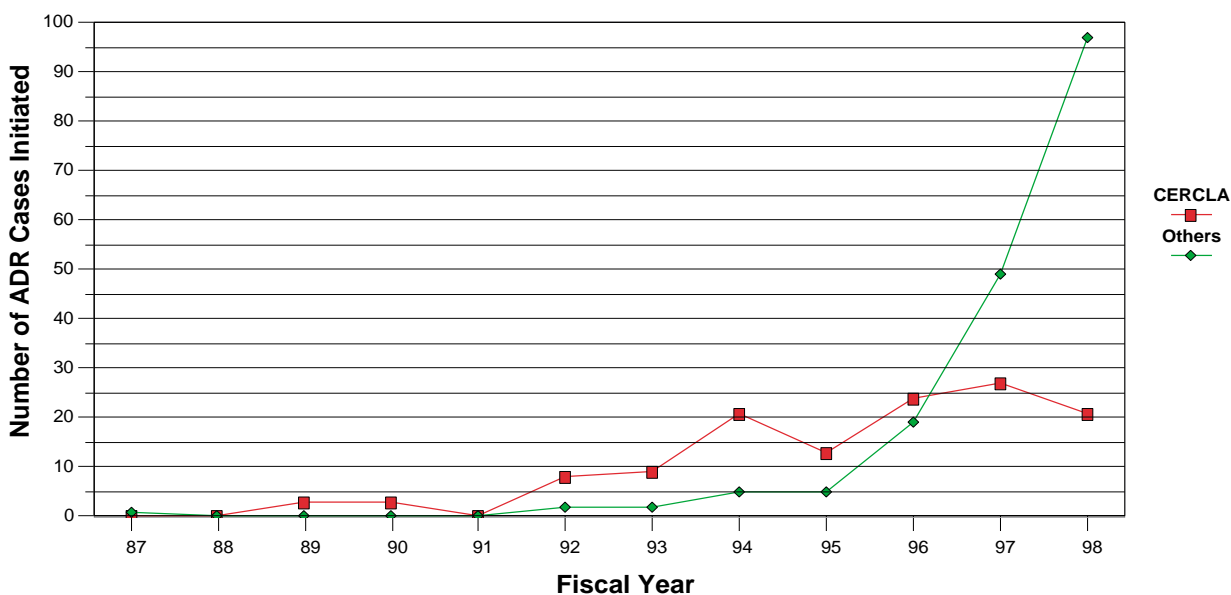
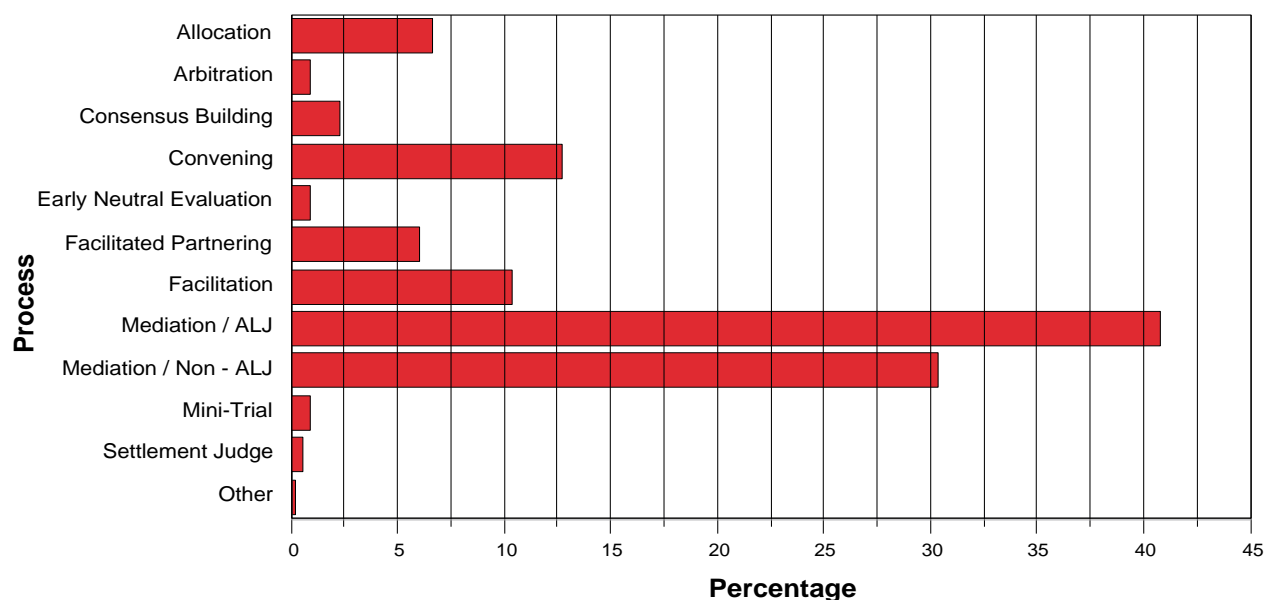


Figure 4: ADR Process Used, 1987-1998



Total exceeds 100% because some cases concern more than one process.

Mediation is by far the most commonly used ADR process in EPA enforcement cases. Figure 4, which shows the percentage of ADR cases that has used each kind of ADR process, shows that 71 percent of all enforcement ADR cases have been mediations. Mediations of administrative penalty cases by ALJs constitute 41 percent of all cases, and non-ALJ mediations constitute an additional 30 percent. ALJ mediation, which is offered to the parties in all administrative penalty cases, is typically faster and less labor intensive than non-ALJ mediation, which often addresses larger, complex cases such as Superfund allocations. Over the history of the enforcement program, 77 percent of non-ALJ mediations have resulted in settlements. For the FY 97/98 reporting period, 79 percent of non-ALJ mediations resulted in settlements.

Convening (13 percent) and facilitation (11 percent) are also commonly used, while all other processes are much less commonly used. For the FY 97/98

Success Story

Del Amo Site/Waste Pits: Mediation Leads to Relocation

The Del Amo site, located in Los Angeles, California, was for many years the site of a synthetic rubber facility. Wastes from the facility, including styrene and benzene, were disposed of in a series of waste pits, causing both soil and groundwater contamination. During the CERCLA remedy selection process, community members living near the waste pits demanded that they be permanently relocated. EPA criteria for selecting relocation as part of a remedy were not met, so EPA Region 9 suggested that the residents and PRPs address the relocation demands in a private ADR process. Both sides agreed, and the community hired a professional as their representative.

Mediation by retired judge Jack Trotter led to a June 1997 agreement in principle under which the PRPs agreed to purchase 63 properties and relocate the residents. Relocation costs paid by the PRPs included moving expenses and cash payments to renters that could be used for down payments on replacement housing. The PRPs also funded a community development loan program to recompense residents who lived somewhat farther from the waste pits and were not relocated. The closings for the last house sales took place in 1998. The PRPs then demolished the homes and began working with an advisory panel of community representatives to draft an appropriate redevelopment plan. Vice President Al Gore sent the participants a letter praising both the community process and the result, which could not have been mandated as part of the remedy for the site, as good examples of “reinventing government.”

reporting period, the most significant variation from this historical pattern was an increase in the use of facilitation (22 times) to a level approaching the use of non-ALJ mediation in the same period (24 times).

A significant number of ADR cases combines the use of two or more ADR procedures. For example, convening is commonly used to bring parties together to consider, with the assistance of a neutral, whether and how they might resolve their dispute through ADR. Convening often results in an agreement to enter into another ADR process, such as mediation, whose goal is the achievement of an agreement that will resolve the dispute. In such cases, both ADR processes are counted in Figure 4. Some of the allocation cases shown in Figure 4 were part of the Allocation Pilots Superfund Reform discussed above, while others represent attempts to achieve Superfund allocations through other ADR processes, most typically mediation.

Over the entire course of the EPA enforcement ADR program, the most common issues addressed have been penalties (49 percent), Superfund cost recovery (15 percent), Superfund allocation (10 percent), Superfund remedial design/remedial action negotiations (7 percent), and community involvement (5 percent). Other ADR cases have addressed numerous other types of dispute, including disputes relating to fraudulent conveyances, federal-state program relations, site access, grant reimbursement, citizens' grievances, and RCRA site closure issues.

Success Story

Summitville Mine: ADR Raises Watershed Awareness

A facilitated series of meetings between community and government representatives, including EPA Region 8, about the health of the Alamosa River watershed improved communication and established working relationships that continue to benefit the watershed. The Summitville Mine Superfund site, a gold mine that operated near the top of the watershed from 1984 to 1992, sends acid- and metal-laden runoff downstream, degrading water quality in the Alamosa River. Although the meetings originally focused on Colorado's recommendation that water quality standards be downgraded for certain segments of the Alamosa, they were soon expanded to encompass a vision of a healthier and more functional watershed.

Perhaps the greatest challenge facing the participants and facilitator Lucy Moore was bridging the gap between their views of the watershed restoration process. The community viewed the agencies' technical processes for setting standards as an impenetrable bureaucratic process over which they had no power, and the agencies were frustrated by the community's failure to appreciate the regulatory constraints they faced. Early meetings resulted in an agreement to circulate drafts of articles before publishing them, which signaled the end of personal attacks in the press. Although there were setbacks triggered by various disputes, personal relations slowly improved and some trust was established, in particular after community members hosted a field trip to the mine and down through the watershed. The agencies also held workshops about the water quality standard process, during which community members provided anecdotal evidence that models of where fish had lived before the mine began operating were inaccurate. The agencies eventually modified their proposed water quality standards in response to this evidence.

The facilitation process not only improved working relationships, but also increased the public and political profile of the Alamosa watershed, which contributed to the governor's creation of the Alamosa River Watershed Restoration Task Force, whose mission is very similar to the facilitation group. The work of the group is also being carried on in roundtable discussions between the community and the agencies about remediation and other watershed issues.

CASE DESCRIPTIONS

ADR Cases Active During FY 97 or FY 98

Region 1

Region: 01
Case Name: American Heritage River Facilitation
EPA Contact: Bob Mendoza
Statute/Section: American Heritage Rivers Executive Order
Issue: Community Involvement
ADR Use Commenced: 08/98
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Providers: Ellie Tonkin, Doug Thompson

The Region 1 ADR team was asked to assist the Blackstone/Woonasquatucket American Heritage River (AHR) contacts in organizing their constituencies to participate in the AHR program. The purpose of the AHR program is to support community-led efforts to spur economic revitalization, protect the environment, and preserve historic and cultural heritage along the designated rivers. A partnership among approximately 100 participants and federal agencies was put in place to assist in securing a “River Navigator” in order to achieve their objectives in the program. The ADR process consisted of several facilitated public meetings, small group meetings, and numerous joint and individual phone calls. A partnership agreement was reached and a Navigator was selected. One of the facilitators’ primary roles has been to work with the community contacts to plan and facilitate three public meetings to engage the community in the AHR program.

Region: 01
Case Name: Asphalt Plant Testing
EPA Contact: Bob McConnell, Regional Contact Lead
Statute/Section: CAA-303
Issue: Air Emissions Testing, Community Involvement
ADR Use Commenced: 04/98
ADR Use Completed: Ongoing
ADR Process: Consensus Building, Facilitation, Mediation
ADR Providers: Dan Winograd, Doug Thompson, Ellie Tonkin, Andrea Simpson

About 40 parties were involved in contentious, unfocused conference calls over emission testing procedures for asphalt plants. A facilitator was brought in to allow for more constructive dialogue with concerned citizens. A series of facilitated conference calls, followed by three days of in-person meetings, and subsequent mediated interactions resulted in various agreements relating to citizen involvement protocols to be used by EPA. The neutrals entered the case as facilitators, but were subsequently called upon by the group to mediate specific issues as they arose. A “tag team” of four neutrals was used to allow for better coverage on short notice.

Region: 01
Case Name: Auburn Road Landfill
EPA Contact: Marcia Lamel and Rona Gregory, Case Attorneys
Statute/Section: CERCLA-106, CERCLA-107
Issue: Remedial Design/Remedial Action
ADR Use Commenced: 03/94
ADR Use Completed: Ongoing
ADR Process: Mediation
ADR Provider: Carmin Reiss

Contentious talks led the case attorney to suggest ADR. With assistance of a mediator, the 34 parties reached an agreement in principle and are now working with the mediator to negotiate the final terms of a consent decree incorporating the agreement in principle.

Region: 01
Case Name: Beacon Heights
EPA Contact: John McNeil, Case Attorney
Statute/Section: CERCLA-106
Issue: Payment of Stipulated Penalty
ADR Use Commenced: 05/96
ADR Use Completed: FY 97
ADR Process: Convening, Mini-trial
ADR Providers: Robert Fisher, Ellie Tonkin

The government and the potentially responsible parties (PRPs) began to jointly design a mini-trial process to break a long-standing impasse in negotiations over the amount of stipulated penalties to be paid pursuant to a Superfund consent decree. EPA indicated to the PRPs that, before the mini-trial began, its outstanding settlement offer would be withdrawn. The case settled during the convening process. This case is a good example of the parties' strategic use of convening to advance settlement without the need for a subsequent ADR process.

Region: 01
Case Name: Beede Waste Oil
EPA Contact: Cynthia Lewis, Case Attorney
Statute/Section: CERCLA
Issue: Information Gathering
ADR Use Commenced: 10/97
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Provider: Susan Podziba, Kate Whitcomb

This was an innovative use of neutral services to assist the Agency in communicating with thousands of parties during the information-gathering stages of a large Superfund case. Many of the parties are small companies or individuals unfamiliar with Superfund and/or frustrated or intimidated by the process. The results have been very encouraging. The neutral allayed many of the parties' fears and kept the case moving forward.

Region: 01
Case Name: Bennington
EPA Contact: Hugh Martinez, Case Attorney
Statute/Section: CERCLA
Issue: Allocation
ADR Use Commenced: 05/95
ADR Use Completed: 06/97
ADR Process: Allocation
ADR Provider: Jim Kohanek

With the assistance of EPA, the potentially responsible parties (PRPs) used their own outside neutral to assist with an internal allocation and settlement proposal. The PRPs acted on their own because they felt a fuller discussion among the PRPs would develop without the presence of EPA representatives. The PRPs' ability to agree on an allocation facilitated settlement with EPA and a consent decree was signed in March 1998.

Region: 01
Case Name: Cedar Swamp
EPA Contact: Valerie Ferry
Statute/Section: CWA-404
Issue: Wetlands Permit
ADR Use Commenced: 10/97
ADR Use Completed: 09/98
ADR Process: Facilitation
ADR Provider: Doug Luckerman

Three parties engaged in gravel mining filled in a wetland without obtaining a permit. The government implemented a restoration plan, which placed some burden on the private parties. Communications broke down when the private parties attempted to dispute the plan. ADR was used to facilitate these discussions, which included tribal representatives. The mediator met individually with the parties to develop an alternate solution that satisfied each party's concerns.

Region: 01
Case Name: Connecticut Tire Pond
Contact: Mark Kindell, Connecticut DEP Attorney
Statute/Section: RCRA
Issues: Solid Waste Disposal and Site Closure Regulations
ADR Use Commenced: 08/97
ADR Use Completed: 02/98
ADR Process: Mediation
ADR Provider: Ellie Tonkin, Doug Thompson

In this enforcement case, the Connecticut Department of Environmental Protection (DEP) and the defendant were at an impasse. The parties had a long and frustrating history of unproductive negotiations. The process consisted of several all-day joint sessions, private caucuses, and conference and individual telephone calls. The parties crafted an agreement involving creative incentives for environmentally beneficial conduct. Direct involvement of technical experts was critical to the success of the process.

Region: 01
Case Name: Eglin/Lead Abatement
EPA Contact: Linda Murphy
Statute/Section: N/A
Issue: Standards
ADR Use Commenced: 01/98
ADR Use Completed: 07/98
ADR Process: Convening
ADR Provider: Ellie Tonkin

A child suffered lead poisoning in a rented apartment contaminated with lead based paint. The child's parent was having frequent and unproductive contact with agency staff about the cost of moving and other frustrations associated with the lead paint issue. The convener conducted numerous conference calls and individual phone calls to clarify the issues and determine whether, how, and with whom a constructive dialogue might occur. Based on the circumstances at the time, no further process resulted.

Region: 01
Case Name: Fort Devens
EPA Contact: Jim Murphy, Community Involvement Coordinator
Statute/Section: CERCLA
Issue: Community Involvement in Base Closure
ADR Use Commenced: 08/94
ADR Use Completed: Ongoing
ADR Process: Consensus Building, Facilitation
ADR Provider: Gregory Sobel

Completion of base closure was delayed due to communication problems between EPA, the Army, and the Army Corps of Engineers. A facilitator was brought in to help the parties discuss the issues involved and to communicate more effectively. The parties have agreed on a process for working together on site cleanup issues and are continuing to make use of the facilitator.

Region: 01
Case Name: GE-Pittsfield
EPA Contact: Marcia Lamel and Tim Conway, Case Attorneys
Statute/Section: CERCLA, RCRA
Issues: Liability, Remedy Selection
ADR Use Commenced: 07/97
ADR Use Completed: Ongoing
ADR Process: Mediation
ADR Providers: Howard Bellman, Gregory Sobel

This mediation addressed the cleanup of polychlorinated biphenyl (PCB) contamination at numerous locations surrounding General Electric's Pittsfield facility, including a portion of the Housatonic River. When settlement negotiations were at an impasse, the government team proposed mediation. Eleven parties, including representatives of Massachusetts, Connecticut, Pittsfield, and several federal agencies, participated in numerous in-person joint sessions, private caucuses, and individual/joint conference calls. A comprehensive agreement in principle was reached in September 1998 and has since been finalized in a consent decree. The parties were initially very skeptical about the likelihood of settlement, and high-level EPA and Department of Justice managers were directly involved. The settlement involves an estimated \$200 million cleanup.

Region: 01
Case Name: Laurel Park, Inc.
EPA Contact: Dan Winograd, Case Attorney
Statute/Section: CERCLA
Issue: Allocation
ADR Use Commenced: 03/98
ADR Use Completed: 04/98
ADR Process: Mediation
ADR Provider: John Bickerman

In a trial involving EPA, the State of Connecticut, and the potentially responsible parties (PRPs), four to five parties desired negotiation assistance to resolve allocation issues on the eve of trial. Two days of intensive, in-person mediation sessions resulted in an agreement in principle. Within a month, the parties reached an agreement on the final terms of settlement.

Region: 01
Case Name: Massachusetts Military Reservation/Otis Air Force Base
EPA Contact: Tim Conway, Case Attorney
Statute/Section: CERCLA
Issue: Remedy Selection
ADR Use Commenced: 03/96
ADR Use Completed: Ongoing
ADR Process: Consensus Building, Mediation
ADR Provider: Greg Sobel, Patrick Fields

The Air Force engaged a third-party neutral to facilitate improved communication among the agencies and the community at this controversial Superfund site. The process has involved facilitation of public meetings and other joint and individual conferences.

Region: 01
Case Name: McKin
EPA Contact: Marcia Lamel, Case Attorney
Statute/Section: CERCLA
Issues: Community Involvement, Remedy Selection
ADR Use Commenced: 03/97
ADR Use Completed: Ongoing
ADR Process: Convening, Consensus Building, Facilitation, Mediation
ADR Providers: Susan Podziba, Michael Lewis, Linda Singer

More than 40 parties used ADR to avert costly litigation and promote community involvement in deciding the future of remedy at the McKin site. A public mediated process was set up which closely followed the recommendations set forth in the convening report resulting from the neutral conflict assessment. Interim agreements have been reached and productive discussions and problem solving sessions are underway. During the ADR process some unexpected new data were obtained, that needed to be addressed by the parties, which extended the length of the ADR process.

Region: 01
Case Name: Nature Conservancy Facilitation
EPA Contact: N/A
Statute/Section: N/A
Issue: Land Use
ADR Use Commenced: 09/98
ADR Use Completed: 10/98
ADR Process: Facilitation
ADR Providers: Ellie Tonkin, Dan Winograd

The New Hampshire chapter of The Nature Conservancy contacted the region. Two conference calls preceded a one-day facilitation with approximately 20 parties. The purpose of the facilitation was to assist the participants in identifying priorities and strategies for achieving their land preservation objectives.

Region: 01
Case Name: New Bedford Harbor
EPA Contact: John McNeil, Case Attorney
Statute/Section: CERCLA
Issue: Remedy Selection
ADR Use Commenced: 12/93
ADR Use Completed: Ongoing
ADR Process: Facilitation, Mediation
ADR Providers: Michael Keating, Jane Wells

The City of New Bedford, Massachusetts, challenged the remedy selected by EPA by passing a local ordinance to prohibit transporting an incinerator onto the site to incinerate PCB-contaminated sediments. The parties ended up in federal court where it appeared that EPA would prevail, but citizen activists were vehemently opposed to the incineration remedy. EPA agreed to sit down with the community in what became known as the New Bedford Forum. The forum met regularly to address issues related to the cleanup of New Bedford Harbor, focusing particularly on the use of incineration and safety concerns associated with dredging operations. Between the forum's regular monthly meetings, subcommittees met to address specific issues. A consensus was reached to landfill instead of incinerate the most highly contaminated sediments. This was one of the first mediated public consensus processes to select a Superfund remedy.

Region: 01
Case Name: Nyanza Chemical Waste Dump
EPA Contact: Joanna Jerison
Statute/Section: CERCLA-107
Issue: Cost Recovery
ADR Use Commenced: 02/93
ADR Use Completed: 09/98
ADR Process: Mediation
ADR Provider: Linda Singer

Negotiations concerning the potentially responsible parties' (PRPs) payment amount and ability to pay for this Superfund cleanup were at an impasse, so the government proposed mediation to help resolve the issues between the four parties. Numerous in-person joint sessions and private caucuses along with numerous individual and joint conference calls were used throughout the process. The mediation was successful and resulted in the signing of a consent decree.

Region: 01
Case Name: Office of Groundwater and Drinking Water - Environmental Justice Meeting
EPA Contact: N/A
Statute/Section: SDWA-1431
Issue: Stakeholder Input Process
ADR Use Commenced: 03/98
ADR Use Completed: 03/98
ADR Process: Facilitation
ADR Providers: Ellie Tonkin, Doug Thompson

Headquarters Office of Groundwater and Drinking Water set up a stakeholder input process to explore the types of studies and other information that might be included in support of future Safe Drinking Water Act (SDWA) regulatory processes. Approximately 12 parties participated in video conferences with other regions, followed by local facilitated dialogue. This was not an agreement - seeking process.

Region: 01
Case Name: Old Southington Landfill
EPA Contacts: Marcia Lamel, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Cost Recovery
ADR Use Commenced: 08/94
ADR Use Completed: 09/98
ADR Process: Allocation, Convening, Mediation
ADR Providers: Linda Singer, Michael Lewis, Carl Helmstetter, James Price

At EPA's suggestion, approximately 200 parties agreed to pursue ADR in anticipation of an especially complex Superfund allocation negotiation. Subsequently the parties opted to participate in the National Allocation Pilot. A team of mediators and a team of allocators worked on parallel tracks. The mediators ultimately facilitated settlement through many in-person sessions and conference calls. This was one of the most complex ADR processes ever used by Region 1. In addition to being one of the first allocation pilots, the parallel mediation included numerous sub-mediations relating to a *de minimis* settlement, the relocation of certain parties, future settlements, and corporate successor issues.

Region: 01
Case Name: Pfizer, Inc.
EPA Contact: Andrea Simpson, Case Attorney
Statute/Section: RCRA, CWA
Issue: Penalty
ADR Use Commenced: 05/96
ADR Use Completed: 11/98
ADR Process: Convening
ADR Providers: Michael Young, Kathleen Roberts

EPA and Pfizer averted litigation of a major multimedia penalty claim with the assistance of ADR. After the negotiations had continued for over a year without producing a settlement, the case was referred to the Department of Justice for litigation. The respondent suggested non-binding arbitration as an ADR process. The Agency believed that mediation would be necessary to ensure the success of the ADR process. With the assistance of a convener, the parties agreed to a mediation process with an evaluative component. The neutral evaluation and subsequent mediated sessions led to resolution of all issues except penalty amounts, which were agreed upon in follow-up conference calls. The resulting settlement in principle was ultimately formalized in a consent decree.

Region: 01
Case Name: Picillo Farm Technical Subcommittee Facilitation
EPA Contact: Anna Krasko, Remedial Project Manager
Statute/Section: CERCLA
Issue: Remedial Construction Project
ADR Use Commenced: 09/98
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Providers: Ellie Tonkin, Doug Thompson, Matt Schweisberg, Andrea Simpson

The EPA project manager approached the Region 1 ADR team for help with unproductive monthly meetings. EPA Region 1 provided trained, in-house facilitators to run the meetings and to document points of agreement on technical issues involving implementation of the selected remedy. The ADR process involved 20-25 participants. With the assistance of the facilitation, the parties routinely agreed on many issues raised at each meeting.

Region: 01
Case Name: Pine Street Canal
EPA Contact: Margery Adams, Case Attorney
Statute/Section: CERCLA
Issue: Remedy Selection
ADR Use Commenced: 09/93
ADR Use Completed: 09/98
ADR Process: Consensus Building, Mediation
ADR Provider: Phil Harter

EPA met with 12 parties, including citizen groups, potentially responsible parties, the state, and an environmental organization, in a mediated forum to develop a consensus on the scope of additional studies to be performed at the site, as well as a proposal for the cleanup. With the assistance of various technical experts, participants performed the studies necessary at the site and agreed to a site remedy.

Region: 01
Case Name: Pittsfield Citizens Coordinating Council
EPA Contact: Angela Bonarrigo
Statute/Section: CERCLA, RCRA
Issue: Remedy Implementation, Community Involvement
ADR Use Commenced: 04/98
ADR Use Completed: Ongoing
ADR Process: Consensus Building, Facilitation
ADR Provider: Jane Wells

ADR is being used to facilitate communication among community groups, General Electric (GE), and government agencies regarding cleanup issues at this controversial and complex site. Facilitated monthly meetings and related sub-meetings and phone calls have been used during the process. GE and government representatives are available to answer questions at the meetings, and the council also has the option of asking GE or EPA consultants to attend meetings and make presentations on topics of interest to council members. This is not an agreement-seeking process. The meetings will continue as the remedy implementation proceeds.

Region: 01
Case Name: Q Park
EPA Contact: N/A
Statute/Section: RCRA
Issues: Landfill Closure, RCRA Permitting
ADR Use Commenced: 02/98
ADR Use Completed: 06/98
ADR Process: Convening
ADR Provider: Ellie Tonkin

At the request of a Resource Conservation and Recovery Act (RCRA) permit applicant, an EPA in-house neutral helped the applicant and the state permitting authority explore the possibility of using mediation to work out the terms of the permit. The ADR process consisted of individual telephone conferences with the three parties. The state ultimately concluded that mediation was not appropriate in this case.

Region: 01
Case Name: Quonset Point
EPA Contact: Tim Timmerman
Statute/Section: CWA-404
Issue: Permitting
ADR Use Commenced: 05/98
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Providers: Michael Keating, Kathy Birt

A stakeholder process was established with 30 participants to hear recommendations on the development of a port at Quonset Point. A series of joint and individual stakeholder meetings addressed many of the issues involved, such as guidelines and principles for the future development of ports. The original development plans were opposed by the stakeholder group. The facilitation opened the doors of communication among all the parties involved.

Region: 01
Case Name: Regency Towers
EPA Contact: Hugh Martinez, Case Attorney
Statute/Section: CAA
Issue: Non-Compliance with Cleanup Order
ADR Use Commenced: 08/96
ADR Use Completed: 10/96
ADR Process: Mediation
ADR Providers: Ellie Tonkin, Marcia Lamel

This was the first case in which private parties to a regional enforcement action (three recipients of an asbestos order) opted to allow members of the Region 1 in-house ADR program to mediate their internal dispute, which threatened to halt the progress of the cleanup. The regional administrator played a significant role in encouraging a key party to come to the table by conveying to the case team his clear support for the process. The imminent work stoppage was averted in a one-day mediation session where an agreement was reached for the continued funding of the cleanup.

Region: 01
Case Name: Selzer & Rydholm
EPA Contact: Doug Luckerman, Case Attorney
Statute/Section: TSCA
Issue: Penalty
ADR Use Commenced: 11/95
ADR Use Completed: 03/97
ADR Process: Mediation
ADR Provider: Bob DiBiccario

This case involved a bottling company that had violated the Toxic Substances Control Act (TSCA). No issue of liability existed, but there was a dispute as to the appropriate amount of the penalty. Mediation assisted the parties in negotiating a final penalty figure, which included a supplemental environmental project (SEP). The mediator assisted the parties in reaching agreement on the penalty amount and the terms of an acceptable SEP.

Region: 01
Case Name: Shepaug River
EPA Contact: N/A
Statute/Section: State Water Permitting
Issue: Inter-Municipality Water Resource Management
ADR Use Commenced: 05/98
ADR Use Completed: Ongoing
ADR Process: Convening
ADR Provider: Ellie Tonkin

EPA staff in the regional water program identified a difficult situation involving the state and several municipalities that they believed might benefit from mediation. After one internal meeting and a series of phone conferences, the convener determined that the case was not ripe for mediation.

Region: 01
Case Name: South Weymouth
EPA Contact: Patty Whittemore, Remedial Project Manager
Statute/Section: CERCLA
Issue: Community Involvement
ADR Use Commenced: 11/96
ADR Use Completed: Ongoing
ADR Process: Consensus Building, Facilitation
ADR Provider: Jane Wells

ADR was introduced to assist the Restoration Advisory Board that is overseeing the closure of a Navy base in addressing environmental contamination issues. The meetings were not running smoothly and needed an outside party to keep them focused and moving forward. The case proceeded with facilitation of monthly meetings. This was not an agreement-seeking case.

Region: 01
Case Name: UConn Landfill
EPA Contact: Chuck Frank, Remedial Project Manager, and Alice Kaufman, Community Involvement Manager
Statute/Section: RCRA
Issue: Community Involvement
ADR Use Commenced: 10/97
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Provider: Marion Cox

EPA proposed neutral conflict assessment in response to numerous citizens' complaints about the state's enforcement approach. The ADR process, conducted by a neutral, took more than 50 parties through a conflict assessment involving numerous phone interviews. The stakeholders then reached a consensus on a public involvement process, which is now in place. Facilitated conference calls and meetings are continuing among various stakeholders.

Region: 01
Case Name: West Site/How's Corner
EPA Contact: Michael Parker, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Cost Recovery, Remedial Design/Remedial Action
ADR Use Commenced: 01/98
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Provider: Susan Podziba

A neutral was brought in to assist EPA in communicating with a large number of potentially responsible parties during the information-gathering stages of a large Superfund case. Many of the parties are small companies or individuals unfamiliar with the Superfund process. This was not an agreement-seeking case.

Region 2

Region: 02
Case Name: Batavia Landfill
EPA Contact: Beverly Kolenberg, Case Attorney
Statute/Section: CERCLA-106, CERCLA-107
Issues: Allocation, Cost Recovery
ADR Use Commenced: FY 96
ADR Use Completed: 08/98
ADR Process: Allocation, Convening
ADR Providers: Ellie Tonkin, Carl Helmstetter, James Price

This site was part of a national allocation pilot program initiated by EPA to ascertain the feasibility of an allocation scheme in a piece of proposed legislation to amend CERCLA. The process included the municipal owner/operators of the landfill, generators, transporters, and EPA. EPA was to fund some of the orphan shares. A convener was used to get the parties to agree on a protocol and to assist in the selection of an allocator. An allocator was selected, fact-finding took place, and an allocation report was issued. A full agreement was not reached, but the parties are trying to negotiate a settlement based, in part, on the allocation. Many parties were dissatisfied with either their allocated shares or the shares assigned to others.

Region: 02
Case Name: Helen Kramer Landfill
EPA Contact: Beverly Kolenberg, Case Attorney
Statute/Section: CERCLA-107
Issues: Allocation, Cost Recovery
ADR Use Commenced: 03/96
ADR Use Completed: 08/98
ADR Process: Convening, Mediation
ADR Providers: David Batson, Linda Singer, Michael Lewis

This huge landfill site in New Jersey was first listed on the NPL in 1983 and the remedy was completed by EPA in 1993. EPA sought recovery of its costs in court. After more than six years of litigation and after an allocation report was not accepted, the U.S. district judge established a settlement process for the use of ADR, based on EPA's recommendation. More than 300 parties were involved in the litigation, including municipalities, *de minimis* parties, transporters, and large industrial generators. After being convened by an EPA neutral, the parties selected co-mediators. After numerous meetings and communications with the mediators, the parties entered into a cost recovery consent decree reimbursing EPA for \$96 million in costs, as well as a separate decree with the state. Even after the settlement, the mediators continued working with the non-settlers, and many have since settled. To date, all but a handful of the defendants have settled.

Region: 02
Case Name: Rosen Brothers Scrap Yard/Dump
EPA Contact: Brian Carr, Case Attorney
Statute/Section: CERCLA-106, CERCLA-107
Issue: Remedial Design/Remedial Action
ADR Use Commenced: 05/98
ADR Use Completed: 10/98
ADR Process: Convening, Mediation
ADR Provider: Kate Whitby

Initially, letters were sent to the 18 identified potentially responsible parties (PRPs) informing them of the opportunity to participate in ADR. After a convening meeting and after the parties agreed to the use of mediation, numerous mediation sessions took place. The case involved a scrap yard with a defunct owner/operator and several industrial generators who could not agree on how to divide the prospective costs and EPA's past costs. Numerous intra-PRP mediation sessions were held parallel to EPA/PRP meetings. This process resulted in a settlement in which EPA agreed to a substantial compromise of its past costs based on the "orphan share" associated with insolvent or defunct parties, and the PRPs agreed to undertake the remedial design/remedial action (RD/RA). The settlement also ultimately lead to the resolution of private contribution actions.

Region: 02
Case Name: Sealand
EPA Contact: James Doyle, Case Attorney
Statute/Section: CERCLA
Issues: Cost Recovery, Remedial Design/Remedial Action
ADR Use Commenced: 11/95
ADR Use Completed: 11/97
ADR Process: Allocation, Convening
ADR Provider: William Hengemihle

The potentially responsible parties (PRPs) for this site were unable to agree on allocation of liability among their group in advance of remedial design/remedial action (RD/RA) negotiations with EPA. In addition, there was a large group of PRPs with shares small enough to be considered *de minimis* generators. The convener assisted in achieving a *de minimis* allocation and settlement and in preparing the larger parties for use of allocation. A settlement was ultimately also reached for RD/RA and cost recovery, to which a portion of the proceeds from the *de minimis* settlement may be applied.

Region: 02
Case Name: Tutu Wellfield
EPA Contact: Andrew Prashcak, Case Attorney
Statute/Section: CERCLA
Issues: Cost Recovery, Remedial Design/Remedial Action
ADR Use Commenced: 01/96
ADR Use Completed: 10/96
ADR Process: Convening
ADR Provider: Debbie Nudelman

The potentially responsible parties (PRPs) for this site were unable to agree on allocation of liability among their group in advance of remedial design/remedial action (RD/RA) negotiations. EPA sought to provide the services of a convener to introduce the use of mediation. After the convening process, the parties ultimately declined mediation, and EPA is proceeding along other enforcement avenues.

Region 3

Region: 03
Case Name: Allegheny Ballistics Lab
EPA Contact: Bruce Beach
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 07/96
ADR Use Completed: 07/98
ADR Process: Facilitated Partnering
ADR Provider: N/A

The Allegheny Ballistics Lab Partnering Team consists of representatives from the Navy, the State of West Virginia, EPA, and the on-site contractors that run the facility. The team developed the skills needed to work effectively together in selecting and implementing environmental response decisions.

Region: 03
Case Name: American Littoral Society & Pennsylvania PIRG v. EPA
EPA Contact: Christopher A. Day, Case Attorney
Statute/Section: CWA-303(d)
Issue: Water Quality Standards
ADR Use Commenced: 08/96
ADR Use Completed: 12/96
ADR Process: Mediation
ADR Provider: Hon. Edwin Naythons

EPA was the defendant in this case regarding its decisions on Pennsylvania's water program under Section 303(d) of the Clean Water Act. Specifically, EPA decisions on Total Maximum Daily Loads, Water Quality Limited Segments, and the Continuing Planning Process were challenged. The Department of Justice (DOJ) nominated this case for ADR in May 1996. DOJ along with EPA retained the services of former Judge Edwin Naythons. The mediation was successful. While it took an unusually long time, a consent decree was eventually signed.

Region: 03
Case Name: American Littoral Society & Sierra Club v. EPA
EPA Contact: Christopher A. Day, Case Attorney
Statute/Section: CWA
Issue: Water Quality Standards
ADR Use Commenced: 09/96
ADR Use Completed: 05/97
ADR Process: Facilitation, Mediation
ADR Provider: Judge Edwin Naythons

EPA was the defendant in this case regarding its decisions on Pennsylvania's water program under section 303(d) of the Clean Water Act. Specifically, EPA decisions on Total Maximum Daily Loads, Water Quality Limited Segments, and the Continuing Planning Process were challenged. Less ADR was necessary in this case because many of the relevant issues had been worked out in *American Littoral Society & Pennsylvania PIRG v. EPA*. The Department of Justice initiated the use of ADR and again used former Judge Edwin Naythons, who established schedules, appropriated attorney fees, and mediated some of the meetings. The mediation resulted in a settlement.

Region: 03
Case Name: Bush Valley Superfund
EPA Contact: Sarah Keating, Case Attorney
Statute/Section: CERCLA
Issue: Remedial Design/Remedial Action
ADR Use Commenced: 08/96
ADR Use Completed: 10/96
ADR Process: Convening
ADR Provider: Ellen Kandell

ADR was suggested to the potentially responsible parties (PRPs) of the Bush Valley Landfill Superfund site in the special notice letter sent by EPA in August 1996. During convening, the PRPs determined that they would revisit the ADR issue at a later time. EPA did not receive a good faith offer from the PRPs to perform the remedial design/remedial action (RD/RA) at the site and is therefore exploring its enforcement options. It is possible, however, that a settlement may still be reached with the PRPs that would include an ADR private-party allocation process.

Region: 03
Case Name: C&R Battery Company
EPA Contact: Yvette Hamilton-Taylor, Case Attorney
Statute/Section: CERCLA-107
Issues: Allocation, Cost Recovery
ADR Use Commenced: 04/95
ADR Use Completed: 09/98
ADR Process: Allocation
ADR Provider: James Kohanek

The C&R Battery Site is one of the sites included in the Superfund Cost Allocation Pilot which was established as part of EPA's Superfund Administrative Reform Initiative. The neutral was brought in to help identify and nominate all parties with a connection with the site. The allocation process was used to facilitate a settlement of EPA's past response costs.

Region: 03
Case Name: Cemetery Lane
EPA Contact: Marcia Preston, Case Attorney
Statute/Section: CERCLA-107
Issue: Cost Recovery
ADR Use Commenced: 10/95
ADR Use Completed: 08/97
ADR Process: Mediation
ADR Provider: Debra Nudelman

In July 1994, EPA and Howard County entered into a tolling agreement regarding a cost recovery action for this CERCLA case. Under the terms of the agreement the parties had until July 13, 1995 to resolve this matter through ADR. The ADR commenced in early 1995. The United States and the county were the only participants in the mediation. The parties reached an administrative settlement.

Region: 03
Case Name: Dahlgren
EPA Contact: Bruce Beach
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 11/96
ADR Use Completed: 05/98
ADR Process: Facilitated Partnering
ADR Provider: N/A

The Dahlgren Installation Restoration Team (DIRT) was formed in late 1996 and consists of the Navy, the Commonwealth of Virginia, and EPA. The team worked on skills to communicate better, develop dispute resolution processes, and become more organized and effective. The team “graduated” from facilitation in May 1998 and continues to work without the assistance of a neutral.

Region: 03
Case Name: Drake
EPA Contact: Wayne Walters, Case Attorney
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 03/97
ADR Use Completed: 09/97
ADR Process: Facilitated Partnering
ADR Provider: Bill Alsop

EPA, the Pennsylvania Department of Environmental Protection (PDEP), and the Army Corps of Engineers (ACE) were addressing the Drake site. There was no real dispute to resolve, but there were questions as to who was responsible for various aspects of the cleanup. EPA brought in Bill Alsop to do formal partnering training for partnership between EPA, PDEP, ACE, and the main contractor.

Region: 03
Case Name: Fort Meade
EPA Contact: Nick DiNardo, Case Attorney
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 05/98
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: Gail Waldron

Federal agencies were asked to clean up their sites. A partnering agreement was utilized but there were many disputes among the parties involved. A facilitator was contracted to hold a series of meetings with teams from EPA and other federal agencies. The meetings were extremely successful. Major turnovers in staff have occurred on both sides without any interruption in progress.

Region: 03
Case Name: Langley Air Force Base
EPA Contact: Stacie Morekas-Driscoll, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 04/95
ADR Use Completed: 06/97
ADR Process: Facilitated Partnering
ADR Provider: Wandl Brown

Federal agencies were asked to clean up their sites. The parties involved were having trouble resolving a number of issues. A facilitator was contracted to hold a series of meetings with teams from EPA and other federal agencies. The facilitator also taught team building skills and communication techniques. The result was a solid working relationship that continues even though the facilitation itself is over.

Region: 03
Case Name: Letterkenny
EPA Contact: Lorie Baker, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 01/98
ADR Use Completed: 09/98
ADR Process: Facilitated Partnering
ADR Provider: Susan Debuque

Federal agencies were asked to clean up their sites. Poor communication between EPA and the Army was slowing the cleanup process. A facilitator was contracted to hold a series of meetings with teams from EPA and other federal agencies. The facilitator taught partnering skills and facilitated discussions. This involvement resulted in a much improved working relationship between EPA and the Army. The facilitator is no longer involved in the meetings, but they continue to be held.

Region: 03
Case Name: Mayor and City of Baltimore v. EPA
EPA Contact: Christopher A. Day
Statute/Section: CWA
Issue: Permitting Grants
ADR Use Commenced: 07/95
ADR Use Completed: 08/98
ADR Process: Mediation
ADR Provider: Judge Harry C. Martin (4th Circuit, retired)

The City of Baltimore originally filed a case to resolve its claims as a grantee regarding five municipal wastewater construction grants awarded by EPA under Title 2 of the Clean Water Act (CWA). The Fourth Circuit Court of Appeals identified the case as appropriate for mediation. The settlement agreement resolves the legal and factual issues raised by the litigation of the five grants and, in addition, resolves disputes regarding 43 CWA construction grants awarded to the city. The parties reached this agreement only because of the long and patient mediation of Judge Harry C. Martin. The settlement reaches far beyond the disputes at issue in the litigation to resolve numerous other issues.

Region: 03
Case Name: Nansemond Ordnance Depot, Tidewater
EPA Contact: Rob Thomson, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 04/98
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: Sandra Chaloux

A base realignment and closure (BRAC) site made a transition from a non-NPL to NPL site. This generated problems with defining the Agency roles and the change in working relationships regarding the cleanup. The Army Corps of Engineers brought in a third party to facilitate and organize a partnering agreement. These efforts have been very successful at getting the groups working together and clarifying whether disputes arise from technical or legal disagreements.

Region: 03
Case Name: Naval Weapons Yorktown
EPA Contact: Robert Stroud, EPA Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 05/97
ADR Use Completed: 11/97
ADR Process: Facilitated Partnering
ADR Provider: Laurel Boucher

Multiple Navy facilities in Virginia were undergoing cleanups. The Navy, EPA, and the Commonwealth of Virginia were brought together under a Navy initiative to utilize partnering in all its cleanup cases. A facilitator was contracted to hold a series of meetings with teams from the EPA and other federal agencies. The partnering did not address the technical aspects of the site, but did help the various parties work efficiently with each other.

Region: 03
Case Name: Norfolk Navy Base
EPA Contact: Harry Harbold, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 10/96
ADR Use Completed: 09/98
ADR Process: Facilitated Partnering
ADR Provider: Wandí Brown

The Navy decided to use a partnering agreement at this site to resolve certain issues and help identify priorities for cleanup. Wandí Brown provided training and various partnering techniques while also facilitating meetings between EPA, the Navy, and Commonwealth of Virginia. The meetings now are held without a third-party neutral, testifying to the success of Ms. Brown's participation.

Region: 03
Case Name: Patuxent River, MD
EPA Contact: Andy Sochanski, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 08/98
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: Laurel Boucher

Federal agencies were asked to clean up their sites. A facilitator was contracted to hold a series of meetings with teams from EPA and other federal agencies. The mediator performed partnering training, facilitated discussions, and consulted on meeting format and agenda issues. Her participation was quite useful; there were few disagreements and progress was made, including the acceleration of certain work schedules and reviews.

Region: 03
Case Name: Quantico Site
EPA Contact: Lisa Bradford, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 09/98
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: N/A

The Navy decided to create partnering teams at all of its bases. At this facility, EPA and the Commonwealth of Virginia are participating in the partnering process with the Navy. A facilitator has provided partnering training and continues to facilitate meetings.

Region: 03
Case Name: Ship Parts Control Center
EPA Contact: Paul Leonard
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 10/96
ADR Use Completed: 03/98
ADR Process: Facilitated Partnering
ADR Provider: Wandl Brown

This was a partnering agreement between federal agencies. A facilitator was contracted to hold a series of meetings with teams from EPA and other agencies. Certain personality conflicts at the working level needed to be resolved and personnel changes were made to fix the problem. While the neutral is no longer involved, the partnering continues.

Region: 03
Case Name: Strasburg Landfill
EPA Contact: Mary E. Rugala, Case Attorney
Statute/Section: CERCLA-107
Issue: Cost Recovery
ADR Use Commenced: 08/95
ADR Use Completed: 08/97
ADR Process: Facilitation
ADR Providers: Kate Whitby, Robert Fisher

EPA incurred costs in connection with work at three different operable units at this landfill site. The 31 potentially responsible parties (PRPs), including 14 owners and/or operators, six corporate generators, two transporters, four municipalities or municipal entities, and five industrial generators, with the assistance of a neutral third party, were invited to attempt to resolve cost recovery issues with EPA prior to litigation. The ADR provider primarily worked to convene the parties, but also served to convey information between EPA and those parties, primarily generators, who responded to the invitation to use ADR. The parties were able to negotiate and settle the case themselves.

Region: 03
Case Name: US v. District of Columbia
EPA Contact: William C. Smith
Statute/Section: CAA
Issue: Power Plant Violation of CAA
ADR Use Commenced: 05/92
ADR Use Completed: 05/98
ADR Process: Mediation
ADR Provider: Daniel Dozier

EPA and DOJ negotiations with a power plant regarding violations of the Clean Air Act were referred to mediation by the court. Mediation took place sporadically. Parties were close to settlement when all mediation was stopped. The parties simply refused to agree on a number of issues. No further action has been taken in this case.

Region: 03
Case Name: US EPA v. Industries Corp. and Harry Zucker
EPA Contact: Douglas J. Snyder, Case Attorney
Statute/Section: SDWA-1423
Issues: Liability, Penalty
ADR Use Commenced: 04/96
ADR Use Completed: 11/96
ADR Process: Mediation
ADR Provider: Jacob Hart

A history of multiple appeals created the need for mediated sessions. A mediator from the US Third Circuit Court of Appeals selected this case and forced parties involved into mediation. Both sides were ordered to submit a statement of the case/appeal to the assigned mediator. The case was then settled during an ordered conference call between the parties, which was run by the mediator. The result was that the defendant agreed to pay a \$1,000 penalty and EPA agreed to withdraw its appeal.

Region: 03
Case Name: United States v. Sun Pipe Line Company
EPA Contact: Daniel Isales, Case Attorney
Statute/Section: CWA 311
Issue: Penalty
ADR Use Commenced: 05/96
ADR Use Completed: 03/97
ADR Process: Arbitration
ADR Providers: Kathryn Simpson, Craig McKay, Joseph Macerelli

The *Sun Pipe Line* case is a civil penalty action arising from defendant's discharge of 537 barrels of gasoline into the navigable waters and adjoining shorelines of the United States. Arbitration was scheduled for February 1997. The parties selected an arbitrator, but they settled the case prior to arbitration, signing a consent decree in November 1997.

Region 4

Region: 04
Case Name: APF Industries
EPA Contact: David Engle, Case Attorney
Statute/Section: CERCLA
Issues: Cost Recovery, Ability to Pay
ADR Use Commenced: 05/98
ADR Use Completed: 05/98
ADR Process: Mediation
ADR Provider: Peter Grilli

The potentially responsible party (PRP), who controlled several corporations in the United Kingdom, had not cooperated with EPA's attempts to negotiate, so a lawsuit was filed in the U.S. District Court for the Middle District of Florida. The case was automatically sent to mediation under a standing order of the court. At the first and only mediation session, the PRP began providing answers to EPA's questions about his claim that he had a limited ability to pay the amount sought from him and his corporations, some of which were bankrupt. Subsequent negotiations led to a settlement based in part on the PRP's limited ability to pay.

Region: 04
Case Name: Aberdeen Pesticide Dumps Site
EPA Contact: Chuck Mikalian, Case Attorney
Statute/Section: CERCLA-107
Issue: Allocation
ADR Use Commenced: 09/96
ADR Use Completed: 01/97
ADR Process: Mediation
ADR Provider: Curtis Von Kamm

Several operators of a pesticide plant had dumped pesticide formulation wastes at multiple locations, some of which had also been used as dump sites by other companies. Complex issues concerning the allocation of costs among the 10 major potentially responsible parties (PRPs) made negotiations with the United States difficult. EPA proposed that the PRPs resolve their allocation disputes using ADR, prepared a draft process agreement, and suggested possible neutrals. After briefing the mediator, the PRPs participated in two weeks of mediation. At the end of that time, a mediated allocation was achieved. The PRPs then began Section 107 and remedial design/remedial action (RD/RA) negotiations with the United States. The result was a consent decree for \$65 million in past costs and future work, which was entered by a federal district court in March 1998.

Region: 04
Case Name: Dupont
EPA Contact: Lynda Crum, Case Attorney
Statute/Section: CAA-112
Issue: Penalty
ADR Use Commenced: 03/98
ADR Use Completed: Ongoing
ADR Process: Early Neutral Evaluation
ADR Provider: Judge James Todd

This case concerned a release of oleum from a Dupont facility. EPA sought penalties for the release under the hazardous air pollutant provisions of section 112 of the Clean Air Act. The parties were unable to agree on a discovery order. Because of the difficulty of conducting discovery, and because section 112 had not previously been litigated, the U.S. proposed early neutral evaluation to identify potential weaknesses in its case prior to conducting formal discovery. A U.S. magistrate evaluated both liability issues (e.g., whether Dupont had exercised due care) and penalty issues, and made findings. The parties are currently attempting to negotiate a settlement in light of the magistrate's findings.

Region: 04
Case Name: Florida LEAF
EPA Contact: Melissa Heath, Case Attorney
Statute/Section: SDWA
Issue: Revocation of Delegated State Program
ADR Use Commenced: 09/96
ADR Use Completed: 12/97
ADR Process: Mediation
ADR Provider: Steve Kinnard

A citizen group sued EPA to begin proceedings to revoke the delegated Florida underground injection control (UIC) program. The state, which was not a party to the lawsuit, agreed to join mediated settlement talks. As a result of the mediation, the parties reached a settlement agreement, which they filed with the U.S. Court of Appeals for the Eleventh Circuit. The settlement included relief the court could not have ordered. For example, EPA and the state agreed to issue policy determinations, and the state agreed to a modification of its program. These reforms could not have been mandated by the court and were only able to be reached through mediation. Unfortunately, the state did not fulfill its obligations under the settlement agreement. The case returned to litigation and EPA eventually prevailed.

Region: 04
Case Name: Georgia CAFO Regulations
EPA Contact: Ira Linville
Statute/Section: CWA
Issues: Community Involvement, Regulation Development
ADR Use Commenced: 04/98
ADR Use Completed: 10/98
ADR Process: Facilitation
ADR Providers: Greg Bourne, Michael Elliott

The Georgia Environmental Protection Division (EPD) convened a stakeholder process to solicit comments and advice concerning the development of regulations for concentrated animal feeding operations (CAFOs). Stakeholders included EPA, environmental groups, agricultural groups, and food processors. Several work groups were formed to address specific CAFO-related issues, such as how to define a CAFO for regulatory purposes, alternatives to waste storage lagoons, and the use of land use buffers around CAFOs. Facilitation was used both for large public meetings at which work groups reported and the public had an opportunity to comment and for some of the work group meetings. At the end of the process, the work groups issued reports describing areas of agreement and disagreement among the stakeholders.

Region: 04
Case Name: Georgia Storm Water General Permit Issuance
EPA Contact: Kevin Smith, Case Attorney
Statute/Section: CWA
Issue: Permit Issuance
ADR Use Commenced: 07/98
ADR Use Completed: Ongoing
ADR Process: Convening, Facilitation
ADR Provider: Carol Baschon

The state had tried unsuccessfully for several years to issue a National Pollutant Discharge Elimination System (NPDES) storm water general permit. Citizen groups successfully blocked each permit. At the urging of the Region 4 Waste Management Division director, the state met with the citizen groups, including the Southern Environmental Law Center and the Chattahoochee Riverkeeper. Region 4 personnel facilitated the meetings. In a brief series of facilitated meetings, the state and the citizen groups were able to agree on the terms of a general permit that the citizen groups would not challenge, and the permit has since been issued (although it has been appealed by other parties).

Region: 04
Case Name: ILCO
EPA Contact: Andrea Madigan, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Ability to Pay
ADR Use Commenced: 12/97
ADR Use Completed: 12/97
ADR Process: Mediation
ADR Provider: Floyd Hale

EPA had previously settled with certain *de minimis* and major potentially responsible parties (PRPs) at the site. Another company had refused to join the major PRP group, demanding instead to be treated as a *de minimis* party. This party claimed to have a limited ability to pay. Using a mediator, EPA met with the major group and with the other party. A tentative settlement was reached after a single session, under which EPA and the major group split funds paid by the other party.

Region: 04
Case Name: Jones Tire & Battery
EPA Contact: Jeff Dehner, Case Attorney
Statute/Section: CERCLA-107
Issue: Cost Recovery
ADR Use Commenced: 09/98
ADR Use Completed: 09/98
ADR Process: Mediation, Allocation
ADR Provider: Abraham Ordover

A federal district court consolidated the United States' cost recovery action with contribution litigation filed against several dozen generator potentially responsible parties (PRPs) by the PRPs conducting the cleanup. EPA proposed mediation, arguing that liability was clear, so there was little point in spending on litigation money that could be included in a settlement. The court ordered the parties into mediation. A major barrier to settlement was that insurance coverage was the only source of funds for several defendants. A two-day mediation process created momentum towards settlement by causing the United States to address issues presented by those defendants and their insurance companies. Those defendants then made settlement offers that they otherwise would not have made. The offers made during mediation were collectively sufficient to allow tentative settlement of the case, and the court later entered a consent decree.

Region: 04
Case Name: Miccosukkee Tribe of Indians v. EPA
EPA Contact: Craig Higgason, Case Attorney
Statute/Section: CWA
Issue: Water Quality Standards
ADR Use Commenced: 07/98
ADR Use Completed: 07/98
ADR Process: Mediation
ADR Provider: Frank Kreidler

The tribe sued the United States, claiming that the state changed certain water quality standards without EPA approval. A single, one-day mediation session was held in which no progress was made, primarily because the dispute concerned a matter of law upon which the parties fundamentally disagreed. The mediation did, however, have some value, as it clarified the issues in dispute as the case returned to litigation.

Region: 04
Case Name: Sapp Battery
EPA Contact: Jeff Dehner, Case Attorney
Statute/Section: CERCLA-107
Issue: Cost Recovery
ADR Use Commenced: 09/98
ADR Use Completed: 10/98
Process: Mediation
ADR Provider: Steve Canard

In federal district court, the United States obtained a judgment against the defendant on liability and costs. The defendant appealed the ruling and the 11th Circuit Mediation Program suggested mediation. The parties to the mediation were the United States, the defendant, and a group of potentially responsible parties (PRPs) who had performed work at the site and sought contribution from the defendant. The only remaining issues were the amount and terms of payment and how the settlement would be split between EPA and PRPs seeking contribution. A two-day mediation resulted in an agreement in principle, since finalized in a consent decree, under which the defendant will pay a total of \$2.1 million (\$1.3 million to the United States and \$800,000 in contribution to the PRPs conducting the cleanup).

Region: 04
Case Name: Sarasota NPDES
EPA Contact: David Savagea, Case Attorney
Statute/Section: CWA-301(a)
Issue: Penalty
ADR Use Commenced: 06/96
ADR Use Completed: 10/96
ADR Process: Mediation
ADR Provider: Susan Schub

Region 4 brought an administrative action against the City of Sarasota, Florida, seeking a penalty for an alleged discharge without a National Pollutant Discharge Elimination System permit, in violation of the Clean Water Act (CWA). The respondent requested mediation by an EPA neutral pursuant to the Region 4 pilot program. After two conference calls with the neutral, the parties reached a settlement in principle.

Region: 04
Case Name: Tennessee Voluntary Compliance Program
EPA Contact: Chuck Mikalian, Case Attorney
Statute/Section: CERCLA
Issue: Federal-State Program Relations
ADR Use Commenced: 04/98
ADR Use Completed: 09/98
ADR Process: Convening
ADR Provider: Robert Fischer

The Region 4 Superfund program negotiated with the Tennessee Superfund program to develop a memorandum addressing the handling of sites in Tennessee's Voluntary Compliance Program. The parties went through a convening process to examine the possible benefits of mediation. After a tentative decision to attempt mediation, this effort was terminated due to programmatic issues beyond the scope of the matter at issue.

Region: 04
Case Name: Vulcraft/Nucor, Inc.
EPA Contact: Alan Dion, Case Attorney
Statute/Section: CAA
Issue: Liability
ADR Use Commenced: 12/97
ADR Use Completed: 12/97
ADR Process: Mediation
ADR Provider: Frank McFadden

The defendant in this case built and began operating a facility without a permit, triggering a lawsuit in which the United States alleged violations of the Clean Air Act's prevention of significant deterioration (PSD) provisions. After denying both sides' motions for summary judgment, the court, at the suggestion of the defendant, ordered the parties into mediation. After a day-long session in which the mediator met separately and collectively with the parties, there was no resolution of the matter. The matter later went to trial, where the defendant won the PSD issue before a jury, but was assessed a \$750,000 penalty by the judge for operating without a permit.

Region: 04
Case Name: Whitehouse Waste Oil Pits
EPA Contact: Simon Miller, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Cost Recovery
ADR Use Commenced: 07/98
ADR Use Completed: Ongoing
ADR Process: Allocation
ADR Providers: David Batson, Thomas Armstrong

This case is one of EPA's Superfund allocation pilot projects. It was chosen as a pilot case because very little generator documentation exists. Of the 145 identified generators at the site, 50 are taking part in the allocation process. Issues include a significant owner/operator orphan share. David Batson mediated the drafting of an allocation process document. The parties then chose Thomas Armstrong to serve as the allocator. The case involves approximately \$3.5 million in past costs and \$8.5 million in future costs.

Region 5

Region: 05
Case Name: Defense Electronic Supply Center, Dayton (Gentile Station)
EPA Contact: N/A
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 09/98
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: Jerry Arcacro, Paul Reis

To remove 30 steam vaults containing asbestos, the Air Force wanted to demolish the vaults and landfill the debris. The Regional Air Force Pollution Control Agency (RAPCA), however, insisted on the abatement of all asbestos within the steam vaults before the vaults were demolished. A facilitator was brought in to help the parties resolve the issue. The facilitator performed partnering training and mediated monthly meetings. The partnering meetings involved the City of Kettering, RAPCA, U.S. EPA, Ohio EPA, and the Air Force. The resulting compromise was that only the nine vaults situated in areas that would be developed in the reuse plan needed on-site abatement and the remaining vaults would be demolished as originally planned. This use of partnering helped minimize project delays. This installation-level (or Tier 1) partnering process grew out of a managerial-level (or Tier 2) partnering process that included EPA Region 5, the Departments of the Navy, Army, and Air Force, the Fish and Wildlife Service, and states from the region.

Region: 05
Case Name: Dutch Boy
EPA Contact: Chris Liszewski
Statute/Section: CERCLA
Issue: Cleanup Coordination
ADR Use Commenced: 01/97
ADR Use Completed: Ongoing
ADR Process: Facilitation
ADR Provider: Jerry Smith, Derrik Kembro

The Dutch Boy property was being cleaned up under CERCLA. Jerry Smith (an employee of IBM) offered his services to help facilitate meetings between federal, state, and local governments, the community, potentially responsible parties (PRPs), and their contractors. These meetings helped all parties involved agree to a unified plan on how best to satisfy everyone's needs during the cleanup process. The PRPs at an adjacent site (International Harvester) had been released by EPA to perform their cleanup under the state's voluntary cleanup program, but also participated in the facilitated meetings. After six meetings, Mr. Smith had to leave the project, but Derrik Kembro (an EPA employee and trained facilitator) volunteered his time to continue the facilitation of these meetings.

Region: 05
Case Name: Glenview Naval Air Station
EPA Contact: Gary Schafer, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 07/96
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: Paul Reis

The Glenview NAS was in the process of being closed and transferred to private ownership when some pieces of asbestos-containing materials were found in the soil. Completely removing the topsoil from the site seemed an expensive and possibly unreasonable option considering the small amount of asbestos found at the site, so further studies were done. It was concluded that there was not enough asbestos to warrant further action. The facilitator concentrated on having the parties agree on guidelines for the partnering process and ensuring that all parties continually obeyed those guidelines. The existing working relationship between the Navy, the State of Illinois, and EPA was already functioning smoothly, so the use of partnering here neither impeded progress, nor improved or strengthened relationships noticeably. This installation-level (or Tier 1) partnering process grew out of a managerial-level (or Tier 2) partnering process that included EPA Region 5, the Departments of the Navy, Army, and Air Force, the Fish and Wildlife Service, and states from the region.

Region: 05
Case Name: Marvin Prochnow Cedarburg Landfill
EPA Contact: Gaylene Vasturo, Case Attorney
Statute/Section: CERCLA
Issues: Liability, Allocation
ADR Use Commenced: 05/97
ADR Use Completed: 08/98
ADR Process: Mediation
ADR Provider: William Hartering

This Superfund case concerned cost recovery for a removal in Cedarburg, Wisconsin. EPA sued various potentially responsible parties (PRPs). PRPs suggested ADR for liability assessment and EPA agreed, so the court stayed discovery and directed the parties to participate in mediation. Various third-party neutrals were interviewed and William Hartering was chosen. Hartering negotiated procedures for the ADR and the parties filed briefs and responses, and met for three days in Milwaukee. The mediation resulted in a settlement, formalized in a consent decree under which the PRPs agreed to pay \$550,000.

Region: 05
Case Name: Michigan Disposal Service (Cork St. Landfill)
EPA Contact: Richard Murawski, Case Attorney
Statute/Section: CERCLA-106, CERCLA-107
Issue: Allocation
ADR Use Commenced: 09/94
ADR Use Completed: 10/96
ADR Process: Arbitration, Convening, Mediation
ADR Provider: Michael Young

In this Superfund case, the primary issue was which party (Michigan Disposal or Kalamazoo) would be responsible for the costs of a landfill cap if costs exceeded current estimates. The ADR was separated into two parts. Phase one included convening the parties and assisting in negotiation of the agreement to mediate. Major decisions in this phase were process design and neutral selection. Phase two was a non-binding arbitration, which resulted in an agreement between Michigan Disposal and Kalamazoo on the allocation of potential additional costs.

Region: 05
Case Name: Naval Industrial Reserve Ordnance Plant (NIROP)
EPA Contact: Tom Bloom, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 12/95
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Providers: Donna Kopeski, Paul Reis

Two major problems plagued this site cleanup. In regard to Operable Unit 1, there was a disagreement between the Navy and the regulators (the Minnesota Pollution Control Agency and EPA) as to whether containment of a trichlorethylene groundwater plume had been achieved. The result was an exchange of letters arguing the point. In regard to Operable Unit 3, the Navy drafted work products and then sent them to the regulators for review. This process became extremely inefficient and resulted in multiple delays. The NIROP partnering team was created to address these problems. With the help of a facilitator, the participants were able to discuss solutions in a more open-minded atmosphere and were able to reach a consensus on solutions to all the problems at hand. The new approaches have been extremely successful and efficient, allowing parties to concentrate on fixing the site instead of laying blame. This installation-level (or Tier 1) partnering process grew out of a managerial-level (or Tier 2) partnering process that included EPA Region 5, the Departments of the Navy, Army, and Air Force, the Fish and Wildlife Service, and states from the region.

Region: 05
Case Name: Naval Air Warfare Center (NAWC)
EPA Contact: Denise Boone, Remedial Project Manager
Statute/Section: CERLCA
Issue: Partnering Agreement
ADR Use Commenced: 01/96
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Provider: Pete Paznokas

Prior to this process, the Navy and its contractors would complete entire work plans and reports concerning cleanups without regulatory input, then the regulatory agencies would all individually review the documents. Partnering brought together all relevant parties to discuss document development as it was happening in a cooperative and professional manner. The result was not just the quicker authorization of better documents, but also the forging of better working relationships with regard to other aspects of the site. This installation-level (or Tier 1) partnering process grew out of a managerial-level (or Tier 2) partnering process that included EPA Region 5, the Departments of the Navy, Army, and Air Force, the Fish and Wildlife Service, and states from the region.

Region: 05
Case Name: NL/Taracorp (Granite City)
EPA Contact: Noemi Emeric
Statute/Section: CERCLA
Issue: Community Involvement
ADR Use Commenced: 04/97
ADR Use Completed: 10/97
ADR Process: Convening
ADR Provider: Marci Depraw

A neutral was enlisted to assist in evaluating the possibility of establishing a community forum to facilitate communication between the community, EPA, and the potentially responsible parties regarding site cleanup. She made recommendations for the parties to consider. The parties were not receptive to the neutral's approach and the community forum was never created.

Region: 05
Case Name: Rickenbacker Air National Guard Base
EPA Case Attorney: Laura Ripley, Remedial Project Manager
Statute/Section: CERCLA
Issue: Partnering Agreement
ADR Use Commenced: 11/95
ADR Use Completed: Ongoing
ADR Process: Facilitated Partnering
ADR Providers: Jerry Arcace

The BRAC Cleanup Team (BCT), comprised of one member each from the Department of Energy, U.S. EPA, and Ohio EPA, was working in an inefficient, adversarial, and highly legalistic environment. Communication among support staff was poor and the site cleanup process was moving slowly. A third-party facilitator was brought in to conduct a two-day partnering workshop with staff from each of the three organizations. After that, certain meetings of the BCT were facilitated, keeping the members focused and helping to resolve disputes that arose. Since this facilitation began, the lines of communication between the parties have been open and work has progressed more quickly. This installation-level (or Tier 1) partnering process grew out of a managerial-level (or Tier 2) partnering process that included EPA Region 5, the Departments of the Navy, Army, and Air Force, the Fish and Wildlife Service, and states from the region.

Region: 05
Case Name: Skinner Landfill
EPA Contact: Sherry Estes, Case Attorney
Statute/Section: CERCLA
Issues: Remedial Design/Remedial Action, Allocation
ADR Use Commenced: 03/97
ADR Use Completed: 12/97
ADR Process: Mediation
ADR Provider: Dan Dozier

Difficulties early in the allocation process made the use of a third-party neutral seem like the best alternative to resolve issues quickly and effectively. The mediator was helpful in securing an agreement among the potentially responsible parties (PRPs) regarding allocation, and the parties decided to continue to use the mediator for remedial design/remedial action (RD/RA) negotiations through December 1997. The parties, now negotiating on their own, are very close to completing a consent decree.

Region: 05
Case Name: Spickler
EPA Contact: Jim Morris, Case Attorney
Statute/Section: CERCLA
Issue: Cost Recovery
ADR Use Commenced: 05/95
ADR Use Completed: 08/97
ADR Process: Allocation, Convening
ADR Provider: Dan Dozier

A third-party neutral first met with the potentially responsible parties (PRPs) to gather information and create a PRP group. After the PRP list was completed, the parties drafted a procedure for obtaining additional information about waste shipments to the site, established an allocation procedure, drafted a participation agreement, and selected a neutral to issue the allocation recommendation. Once a final allocation recommendation was issued, the parties were able to negotiate a settlement.

Region: 05
Case Name: Westinghouse Electric Corporation
EPA Contact: Jeff Cahn, Case Attorney
Statute/Section: CERCLA
Issue: Remedial Investigation
ADR Use Commenced: 04/97
ADR Use Completed: 11/98
ADR Process: Facilitation, Mediation
ADR Provider: Nancy Newkirk

The parties disagreed about different aspects of the remedial investigation, and this dissension often slowed the investigation process considerably. The neutral facilitated discussions and negotiations between the parties. The services of the neutral were terminated upon the judge's ruling that a federal magistrate was to be used for future disputes. A settlement is currently in the works that will cover all six sites involved in the case.

Region 6

Region: 06
Case Name: Shintech
EPA Contact: Larry Starfield, Case Attorney
Statute/Section: CAA (Title V), RCRA
Issues: Community Involvement, Environmental Justice
ADR Use Commenced: 10/97
ADR Use Completed: 02/98
ADR Process: Facilitation
ADR Providers: Greg Bourne, David Hooker

The dispute concerned the siting of a polyvinyl chloride (PVC) production facility in St. James Parish, Louisiana. There was significant community opposition, as well as some support, for building the facility. The proposed permit met existing regulatory guidelines and did not exceed air quality standards. Region 6 and the Louisiana Department of Environmental Quality (LDEQ) agreed to hire facilitators. The facilitators first interviewed a number of stakeholders, then facilitated three meetings in which the LDEQ and EPA met separately with Shintech, parties opposed to the facility, and parties supporting the facility. Facility opponents refused to participate in negotiations about the siting of the facility, so the ADR process came to an end. Shintech ultimately decided to build its facility elsewhere.

Region: 06
Case Name: South 8th Street
EPA Contact: Anne Foster, Case Attorney
Statute/Section: CERCLA-104
Issue: Remedial Design/Remedial Action
ADR Use Commenced: 06/96
ADR Use Completed: 12/98
ADR Process: Convening
ADR Provider: Dan Dozier

This Superfund case involved several potentially responsible parties (PRPs) at the South 8th Street Landfill site and went through complex settlement activities. Pre-mediation services for the enforcement negotiations regarding the site were provided. The PRPs in this case wished to settle through a pre-mediation process with a convener, and ended up settling before the planned allocation began. The costs of convening activities were shared by EPA and the private parties, with the private parties making independent arrangements for payment of the selected neutral.

Region 7

Region: 07
Case Name: Hastings Ground Water Site
EPA Contact: Audrey Asher, Case Attorney
Statute/Section: CERCLA-106
Issue: Allocation
ADR Use Commenced: 10/96
ADR Use Completed: 02/97
ADR Process: Allocation Pilot
ADR Providers: David Batson, Eric Van Loon

The potentially responsible parties (PRPs) for a 30-year-old landfill that contained industrial and municipal solid wastes participated in an allocation process concerning the costs associated with cleanup of the site. EPA reached a global settlement with both federal and private PRPs before the allocator issued a report. Under the settlement, the PRPs agreed to pay most of the past and future costs, while EPA picked up the “orphan share” associated with insolvent or defunct PRPs.

Region: 07
Case Name: Pools Prairie Site, Neosho, Missouri
EPA Contact: Daniel J. Shiel, Case Attorney
Statute/Section: CERCLA
Issue: Allocation
ADR Use Commenced: 06/98
ADR Use Completed: Ongoing
ADR Process: Convening
ADR Provider: Robert Fisher

Communication problems among the five potentially responsible parties (PRPs) included difficulties resolving issues relating to the sharing of information. The parties are still in the convening stage, and this ADR process is expected to continue into FY 00. The goal of the convening is to help the PRPs create an allocation process. Since the PRPs began to work together in the convening process, EPA has not been directly involved.

Region: 07
Case Name: West Lake Landfill
EPA Contact: David Hoefer, Case Attorney
Statute/Section: CERCLA
Issue: Allocation
ADR Use Commenced: 01/97
ADR Use Completed: 02/98
ADR Process: Convening
ADR Provider: Bill Hartgering

The Department of Energy, one of the potentially responsible parties for the landfill, sought an allocation of costs so it could work out its budget. The convening/allocation attempt was prompted by statements made by Deputy Secretary Grumbley (DOE) and the regional administrator for Region 7 urging that allocation be attempted. These statements were made at a public meeting of the St. Louis Formerly Utilized Sites Remedial Action Program (FUSRAP) task force. Allocation was not achieved because the process fell apart after the convening. The convening occurred prior to the completion of the record of decision (ROD). Parties are now awaiting issuance of the ROD and its cost estimate. Getting the parties together to discuss allocation issues was useful, but because the cost of the cleanup had not been determined, the discussion failed to move the case forward.

Region 8

Region: 08
Case Name: Bingham Creek Mini-Trial
EPA Contact: Karen Kellen, Case Attorney
Statute/Section: CERCLA-107
Issue: Cost Recovery
ADR Use Commenced: 03/96
ADR Use Completed: 12/97
ADR Process: Mini-Trial
ADR Provider: Dick Dana

This was a CERCLA cost recovery case involving a successor in interest to historic mining operations in Bingham Canyon, Utah. Both EPA and the PRP were willing to try a mini-trial ADR process. The mini-trial allowed both sides to prepare arguments and modify negotiation and trial strategy. Although an agreement was not reached, the mini-trial was a good preparatory exercise for both parties. The Department of Justice was satisfied because it felt that the strengths and weaknesses in EPA's case were clarified.

Region: 08
Case Name: Blackfeet/UIC ADR
EPA Contact: Daniela Thigpen, UIC Program Contact
Statute/Section: SDWA
Issues: Community Involvement, Secondary Oil Recovery Operations Standards
ADR Use Commenced: 09/96
ADR Use Completed: 04/98
ADR Process: Mediation
ADR Provider: Nancy Moore-Hope

Federal agencies and the Blackfeet tribe were at an impasse regarding the application of underground injection control (UIC) regulations to "stripping" or secondary oil recovery operations on the Blackfeet reservation. They also were sufficiently interdependent to make mediation appropriate and effective. The mediation process broke the impasse and left all parties very satisfied. The stakeholders have re-established open lines of communication and have improved the way issues regarding secondary recovery of oil are addressed within the Blackfeet Nation. The parties drafted a memorandum of understanding to outline the agreement between them.

Region: 08
Case Name: Clark Fork
EPA Contact: Bob Fox, Montana Superfund Operations Director
Statute/Section: CERCLA
Issues: Community Involvement, Remedy Selection
ADR Use Commenced: 01/98
ADR Use Completed: Ongoing
ADR Process: Convening
ADR Provider: Debra Nudelman

The community felt it was being prevented from having effective involvement in this large-scale remedial action located along the Clark Fork in Montana. ADR was suggested by the regional contact to explore ways to enhance public involvement. The most important interest of the non-EPA stakeholders was the improvement of communication and trust between all the stakeholders in the matter. After a convening was conducted, the neutral made recommendations to the Montana EPA Operations office regarding ways in which it could improve its public involvement processes. No further ADR activity was recommended, and the community and stakeholders agreed with the neutral's assessment of the situation. It was determined that ADR beyond the initial convening was not warranted, but that ADR possibly would be beneficial in the future. The community needed to feel that EPA's remedial project manager was listening to them and could be trusted. In this case, convening alone was enough to address community concerns and move the process forward.

Region: 08
Case Name: French Gulch/Wellington-Oro
EPA Contact: Andy Lensink, Case Attorney
Statute/Section: CERCLA
Issues: Community Involvement, Land Use, Remedy Selection
ADR Use Commenced: 06/95
ADR Use Completed: 10/98
ADR Process: Facilitation
ADR Provider: Kristie Parker

EPA selected the Wellington-Oro mine site in Summit County, Colorado as a pilot for the use of the new community-based approach to remedy selection and implementation. EPA hired a neutral to facilitate issue identification, brain storming, and problem solving among 28 local, state, and federal stakeholders. The public was also involved in this process, although members of the public had previously expressed little interest in this cleanup or issues relating to it. The stakeholders came to numerous interim agreements regarding how to address this very complex mine site cleanup. The site is still under investigation, and the stakeholders continue to participate in the cleanup process without facilitation.

Region: 08
Case Name: Hansen Container
EPA Contact: Suzanne Bohan, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Cost Recovery
ADR Use Commenced: 09/97
ADR Use Completed: 01/98
ADR Process: Mediation
ADR Provider: Jamie Harrison

After a removal action was complete, the potentially responsible parties (PRPs) did not organize or respond promptly to each other or EPA. It was suggested that a mediator might convene the PRPs, provide focus, set and help the parties meet deadlines, and move the parties toward settlement. The mediation was effective, with concerns being voiced freely by all involved. An order was signed providing for repayment of EPA's costs. The PRPs expressed thanks to EPA for taking their interests and needs into consideration. These included an "orphan share" associated with insolvent or defunct parties and equitable issues that affected cost recovery.

Region: 08
Case Name: Muddy Creek
EPA Contact: Joni Teter, Case Attorney
Statute/Section: CWA-404
Issues: Wetlands Permit, Inter-Agency Issues
ADR Use Commenced: 02/98
ADR Use Completed: 11/98
ADR Process: Facilitation
ADR Providers: Amy Jenkins, John Talbott, Grant Stumbough

This matter, which concerned actions taken without required wetlands permits and violations of wetlands permits, involved local, state, and federal agencies in addition to facility operators, for a total of eight parties. EPA suggested to the parties that a facilitator might ease strained communications among them. One neutral convened the parties and facilitated one meeting, after which the State of Wyoming hired a different neutral to facilitate. This neutral was later succeeded by a Wyoming state employee who facilitated communication among the parties during negotiations. The negotiations resulted in an agreement that was eventually formalized in an administrative order on consent (AOC). The AOC not only settled past violations, but also addressed roles and responsibilities for future planning and provided for assistance to the Little Snake River Conservation District from the Bureau of Land Management and the Natural Resources Conservation Service.

Region: 08
Case Name: Murray Smelter
EPA Contact: Bonnie Lavelle, Remedial Project Manager
Statute/Section: CERCLA
Issues: Community Involvement, Remedy Selection
ADR Use Commenced: 10/96
ADR Use Completed: 04/98
ADR Process: Facilitation
ADR Providers: Louise Smart, Bernie Mayer

This matter involved local, state, and federal agencies as well as members of the community and a potentially responsible party (PRP). The six parties held strong positions concerning a proposed prospective purchaser agreement and implementation of the remedy at this Superfund site. EPA suggested the use of a neutral third party to facilitate communication among key stakeholders and to ensure that the community understood and approved of the way EPA and the PRP agreed to implement the remedy. Communication was improved, and all parties were able to move forward in agreement on how to integrate future site development plans with the cleanup process at this site. The EPA remedial project manager (RPM) remarked that the neutral was able to draw out of the group new and unique options for remedy implementation that would not have occurred to the RPM herself.

Region: 08
Case Name: National Lead Workgroup
EPA Contact: Bill Murray, Director of Program Support
Statute/Section: CERCLA
Issue: Cleanup Standards
ADR Use Commenced: 06/97
ADR Use Completed: 07/97
ADR Process: Facilitation
ADR Provider: Alana Nastor

Region 8 and EPA headquarters had significant differences concerning the setting of cleanup levels and risk determination regarding lead contamination. Region 8 suggested that a facilitator be used to improve communication and lower the level of conflict among the 10 regions and EPA headquarters. There was little effort made by headquarters or the regions to work with the facilitator to change communication patterns between them. Consequently, the facilitation process provided only moderately satisfactory results, and there was minimal improvement in communication between the parties.

Region: 08
Case Name: Ramp Industries
EPA Contact: Joni Teter, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Cost Recovery
ADR Use Commenced: 04/97
ADR Use Completed: 03/98
ADR Process: Mediation
ADR Provider: Mike Harty

This case involved 800 *de minimis* potentially responsible parties (PRPs), and coordination of these *de minimis* parties was very difficult. ADR was suggested as a response to this situation and the other problems involving settlement negotiations with major PRPs. Although the issues were not complex, the parties were hard to organize. Mediation enabled all parties to improve communication, and an equitable agreement was reached quickly. The parties were very satisfied and enthusiastic about the mediation process. The PRPs were particularly satisfied with the use of ADR in this matter as they felt it allowed them really to be heard by EPA and to have their interests addressed in the settlement process.

Region: 08
Case Name: Rocky Mountain Arsenal
EPA Contact: Laura Williams, Remedial Project Manager
Statute/Section: CERCLA
Issues: Community Involvement, Remedy Selection
ADR Use Commenced: 10/97
ADR Use Completed: 06/98
ADR Process: Convening, Early Neutral Evaluation
ADR Providers: Kristie Parker, Lisa Prudy

Teams at this federal facility have experienced long periods of conflict with key stakeholders and members of the community. After the community repeatedly expressed widespread dissatisfaction with the way the cleanup was being implemented, Region 8 brought in a neutral third party to try to convene the 25 community and other stakeholders. The most vocal of the community members did not want to work directly with Region 8 on their issues of concern. Instead, they contacted the Superfund National Ombudsman, who met with community activists several times in a process separate from the neutral's. All stakeholders and community members were willing to participate in the convening and early neutral evaluation. The neutral interviewed the stakeholders about their views of the cleanup process and prepared a summary report of issues and recommendations. This report was distributed to all involved, and many recommendations were implemented. Although the stakeholders did not want to go beyond convening and early neutral evaluation, EPA benefited from the information gathered in these processes. In addition, the community and other stakeholders gained a more balanced perspective of the cleanup process.

Region: 08
Case Name: Sand Creek Industrial Site
EPA Contact: Richard Sisk, Case Attorney
Statute/Section: CERCLA
Issues: Allocation, Cost Recovery
ADR Use Commenced: 10/96
ADR Use Completed: 08/98
ADR Process: Mediation
ADR Provider: Kate Whitby

There was a significant time lapse between the cleanup and cost recovery measures at this Superfund site, so ADR was suggested to facilitate communication among the potentially responsible parties (PRPs) and to allocate liability. The PRPs never formed a PRP committee and had not worked with each other or EPA to resolve liability prior to initiation of the convening. After convening, the parties communicated well with EPA, and the mediator was used on a situation-by-situation basis to deal with specific issues that became stumbling blocks to settlement. Settlement was reached with all but one party, against whom a complaint was filed, and then settlement was achieved.

Region: 08
Case Name: Sandy Smelter
EPA Contact: Bonnie Lavelle, Remedial Project Manager
Statute/Section: CERCLA
Issues: Community Involvement, Land Use, Remedy Selection
ADR Use Commenced: 05/97
ADR Use Completed: 11/97
ADR Process: Mediation
ADR Provider: Louise Smart

EPA and the Utah Department of Environmental Quality were working to establish cleanup levels and help the community achieve redevelopment objectives for this Superfund site. With the help of a third-party neutral, the cleanup was achieved and redevelopment plans were implemented. In addition, communication between EPA and six stakeholders was improved. The EPA remedial project manager (RPM) is adept at ADR and handled the ADR aspects of this case from the outset without much assistance. Bringing in a neutral was very timely, as the RPM needed to be “at the table” representing EPA more than she had been when using her own skills as a consensus builder. It was useful to have the neutral ensure that local and state stakeholders were empowered and felt that they were heard during the ADR process.

Region: 08
Case Name: Sioux Falls Brownfields
EPA Contact: Kathleen Atenico, Brownfields Coordinator
Statute/Section: Brownfields
Issue: Land Use
ADR Use Commenced: 10/97
ADR Use Completed: Ongoing
ADR Process: Mediation
ADR Provider: Tammara Trussell

This dispute concerns relocation of a salvage yard situated in the center of a brownfields redevelopment property in Sioux Falls, South Dakota. A neutral was brought in because the city and the salvage yard could not agree on the sale price or other terms, such as whether the city would pay for relocation of the business, and other stakeholders had concerns about both the cleanup and redevelopment plans. In addition, not every stakeholder was being included in the process. The mediation is ongoing.

Region: 08
Case Name: Summitville Mine
EPA Contact: Jim Hanley, Remedial Project Manager
Statute/Section: CERCLA, CWA
Issues: Remedy Selection, Watershed Issues
ADR Use Commenced: 09/96
ADR Use Completed: Ongoing
ADR Process: Convening, Facilitation
ADR Provider: Lucy Moore

This Superfund site, a former gold mine, presented many issues regarding remedy selection and the future of the Alamosa River watershed, which was being damaged by acid and metal-laden runoff from the mine. The state especially was having difficulty communicating effectively with the community. A neutral was brought in to convene the stakeholders, then the stakeholders collectively selected a facilitator. The facilitation, in which parties addressed a broad range of issues affecting the watershed, lowered the level of conflict and improved communication between all involved. The work of the facilitation participants not only forged a working relationship that has continued, but also contributed to the establishment by the governor of Colorado of the Alamosa River Watershed Task Force.

Region: 08
Case Name: Zabel Battery
EPA Contact: Rick Baird, Case Attorney
Statute/Section: CERCLA-107
Issue: Allocation, Cost Recovery
ADR Use Commenced: 08/97
ADR Use Completed: 06/98
ADR Process: Convening
ADR Provider: Jamie Harrison

The two PRPs were being uncommunicative about cost recovery, and EPA felt it was being forced to litigate. A neutral was hired to convene the potentially responsible parties (PRPs) in this matter. The ADR process ended after the convening, as one PRP agreed to enter into settlement discussions with EPA without further assistance from the neutral, while the other PRP refused ADR. The first PRP successfully negotiated a cost recovery settlement with the region, and the other PRP settled after EPA filed a complaint for cost recovery.

Region 9

Region: 09
Case Name: Borden Ranch
EPA Contact: Hugh Barroll, Case Attorney
Statute/Section: CWA-404
Issues: Standards, Land Use
ADR Use Commenced: 03/98
ADR Use Completed: 10/98
ADR Process: Mediation, Fact-finding, Mini-Trial
ADR Providers: EPA and U.S. Army Corps of Engineers

Three private parties entered into an administrative order on consent with the government, agreeing to preserve certain wetlands to mitigate the effects of land preparation activities they had conducted on other wetlands. The private parties agreed to set the land aside, but contended that the mitigation demands were excessive and insisted on impact studies to reconsider the mitigation requirements. The ADR process, culminating in a mini-trial, provided a vehicle for reconsideration of the mitigation requirements, leading to the upholding of the original position on the mitigation.

Region: 09
Case Name: Consultative Process for Ports/Ships
EPA Contact: John Ungvarsky, Case Attorney
Statute/Section: CAA
Issue: Air Pollution Reduction Strategies
ADR Use Commenced: 10/96
ADR Use Completed: 10/97
ADR Process: Facilitation
ADR Provider: Alana Knaster

This case involves stakeholder-based negotiations over strategies to reduce air pollution from marine vessels and ports in the Los Angeles, California area. EPA brought in a third-party neutral to facilitate the negotiations. Three work groups were created as a result. One group developed a memorandum of agreement and helped jointly fund some research. The other two groups involved more information sharing and issues education. Use of facilitator ended in October 1997, but there are still items being worked on without the facilitator's services.

Region: 09
Case Name: Continental Fixture Company
EPA Contact: Carol Bussey, Case Attorney
Statute/Section: CAA
Issue: Penalty
ADR Use Commenced: 10/97
ADR Use Completed: 02/98
ADR Process: Mediation
ADR Provider: Magistrate Dale Drozd

The United States filed a lawsuit against a party that had constructed a facility without obtaining Clean Air Act permits or using the best available control technology (BACT) required for its emissions of reactive organic compounds. The defendant had also failed to respond in a timely fashion to an information request. Shortly after the lawsuit was filed, the parties agreed to attempt mediation, and the court appointed a federal magistrate as mediator. By the time the mediation took place, the defendant had obtained the required permits, under which it agreed to keep emissions to a level that would not trigger BACT requirements, so only penalty issues remained. After two meetings with the mediator, the parties agreed to a settlement under which the defendant would pay \$100,000 in penalties over 12 months.

Region: 09
Case Name: Del Amo Site Waste Pits
Case Contact: John Lyons, Case Attorney
Statute/Section: CERCLA
Issue: Community Relocation
ADR Use Commenced: 01/96
ADR Use Completed: 06/97
ADR Process: Mediation
ADR Provider: Justice Jack Trotter (ret.)

The Del Amo site, located in Los Angeles, California, was for many years the site of a synthetic rubber manufacturing facility. Wastes from the facility, including styrene and benzene, were disposed of in a series of waste pits. During the CERCLA remedy selection process, residents living near the waste pits demanded that they be permanently relocated. EPA criteria for selecting relocation as part of a remedy were not met, so EPA suggested that the residents and potentially responsible parties (PRPs) address the relocation demands in a private ADR process. Both sides agreed, and the resulting mediation led to a settlement in which the PRPs agreed to purchase 63 properties, pay moving expenses, and fund a community development loan program for the area surrounding the properties that were purchased.

Region: 09
Case Name: Del Norte Pesticide Storage
EPA Contact: Shauna Woods, Case Attorney
Statute/Section: CERCLA-107, CERCLA-122h
Issues: Allocation, Cost Recovery
ADR Use Commenced: 02/94
ADR Use Completed: 09/98
ADR Process: Mediation
ADR Provider: Sandra Rennie

EPA and the California Department of Toxic Substances Control (DTSC) entered into mediation with seven generator potentially responsible parties (PRPs) regarding recovery of cleanup costs for the Del Norte County Pesticide Storage Area Superfund site. This extremely long ADR involved mediation and negotiation between the parties and resulted in a settlement and administrative order on consent.

Region: 09
Case Name: Iron Mountain Mine
EPA Contact: Rick Sugarek, RPM
Statute/Section: CERCLA
Issue: Cost Recovery
ADR Use Commenced: 10/96
ADR Use Completed: Ongoing
ADR Process: Mediation
ADR Provider: Jay Lawrence Irving

This Superfund case involving cost recovery against one major potentially responsible party (PRP) was held up in litigation for about 10 years. Cost recovery litigation has been going on since 1991 and site costs are expected to exceed \$200 million. The parties had previously tried unsuccessfully to settle without the assistance of a mediator. The court ordered the parties to engage in settlement negotiations, and they found a mutually acceptable mediator. Cost recovery mediation commenced in October 1996 and is ongoing.

Region: 09
Case Name: Purity Oil Sales, Inc.
EPA Contact: Matt Strassberg, Case Attorney
Statute/Section: CERCLA-122
Issue: Allocation
ADR Use Commenced: 06/95
ADR Use Completed: 03/97
ADR Process: Allocation, Mediation
ADR Provider: Judge Layn Phillips (ret.)

This case concerned cleanup of lead in soils and volatile organic compounds in groundwater at a former used oil recycling facility. EPA and the potentially responsible party (PRP) conducting the cleanup were both seeking cost recovery/contribution from 150 other PRPs. The PRPs, with the close involvement of EPA, entered into a private allocation process. EPA approved the ADR guidelines and participated in informal mini-trials before the allocator. The allocated percentages of responsibility were never disclosed, but were used as the basis of a subsequent settlement with EPA. A consent decree formalizing the settlement was lodged in November 1998.

Region 10

Region: 10
Case Name: Pacific Hide and Fur Site
EPA Contact: Jim Oesterle, Case Attorney
Statute/Section: CERCLA-106, CERCLA-107
Issues: Allocation, Cost Recovery
ADR Use Commenced: 03/97
ADR Use Completed: 07/98
ADR Process: Mediation
ADR Provider: Judge Richard Dana

This case concerned the cleanup of a former recycling facility contaminated with polychlorinated biphenyls and lead. Mediation was court mandated. The mediation addressed three separate sets of claims: 1) EPA claims against private parties; 2) private party claims against private parties; and 3) private party claims against insurers. After an initial meeting attended by all the parties, the mediator met separately with the owners/operators, the generators, and the insurers. The mediator also brokered a deal in which a recalcitrant owner/operator who had not been participating in the mediation sold his property to another owner/operator contingent upon the settlement. A global settlement resolving all the claims was eventually achieved.

Region: 10
Case Name: Tulalip Landfill
EPA Contact: Elizabeth McKenna, Case Attorney
Statute/Section: CERCLA-106, CERCLA-107
Issues: Allocation, Cost Recovery
ADR Use Commenced: 01/95
ADR Use Completed: 11/97
ADR Process: Allocation
ADR Provider: Dan Dozier

Region 10 initiated settlement negotiations pursuant to CERCLA with several potentially responsible parties (PRPs) at the Tulalip Landfill Superfund site in FY 1995, seeking costs of response activities previously undertaken by EPA and performance of future response actions at the site. The cleanup was necessary because leachate from the landfill, containing pesticides, heavy metals, and other contaminants, was draining into ecologically sensitive wetlands. The parties entered EPA's allocation pilot program, then decided to attempt to accelerate that process by entering mediation. A three-day mediation, including a session that stretched into the early morning hours, failed to achieve a settlement. The mediation did, however, result in an important concession by a major party on which the eventual settlement was based. The parties returned to the allocation process for a short period, then all but two parties settled just before substantive briefs were to be filed. The two remaining parties continued in the allocation process for more than a year, then entered into a settlement based on the final allocation report.

CONSENT DECREES THAT INCLUDE ADR PROVISIONS

EPA’s model consent decrees typically include a dispute resolution process consisting of an informal negotiation period (typically 20 or 30 days) followed, if necessary, by a formal dispute resolution process where the settling defendants and EPA exchange written statements of position on the issue in dispute. EPA then makes an administrative decision resolving the dispute. The defendants may seek judicial review of EPA’s decision under the continuing jurisdiction of the court that originally approved the consent decree.

The model consent decree dispute resolution provisions may be supplemented with provisions for alternative dispute resolution. Such ADR provisions typically provide for nonbinding mediation either during the informal negotiation period or between informal negotiations and the

initiation of formal dispute resolution. Most ADR provisions require the mutual consent of the parties at the time mediation is proposed. In some cases, however, the parties agree in the consent decree to enter into mediation whenever one of the parties requests it. If mediation does not result in an agreement, the parties may proceed to formal dispute resolution and/or judicial review, as provided in the consent decree. Two examples of dispute resolution provisions in CERCLA consent decrees that have been supplemented with ADR provisions are included at the end of this section.

The following table lists selected consent decrees that include ADR processes as part of their dispute resolution procedures. The nature of the ADR provision is briefly described in the “ADR Process” column.

Consent Decrees with ADR Provisions

Region	Name	Type of Case	ADR Process	Year
1	Old Southington Landfill	CERCLA	Informal, including Mediation, then Formal.	1998
1	Norwood PCB Site	CERCLA	None for property law issues; otherwise Informal, including Mediation, then Formal.	1997
1	Central Landfill	CERCLA	Informal (initial meeting with mediator on request of any party), including Mediation, then Formal.	1996
1	South Municipal Water Supply Well	CERCLA	Informal, including Mediation, then Formal.	1997

Region	Name	Type of Case	ADR Process	Year
2	Barceloneta Landfill	CERCLA	Informal, then Mediation (direct to judicial review if the parties do not agree to mediate).	1997
3	Saltville Waste Disposal Pond	CERCLA	Informal, then optional Mediation, then Formal.	1997
3	Fike Chemical	CERCLA	Informal, then optional Mediation, then Formal.	1996
3	Blue Plains Wastewater Treatment Plant	CWA	If the defendant rejects certain consultant recommendations, the U.S. may invoke compulsory, nonbinding Mediation.	1995
3	Lindane Dump	CERCLA	Informal, then optional Mediation for certain disputes or Formal.	1993
4	Wingate Road Municipal Incinerator and Landfill	CERCLA	Informal, including Mediation, then Formal.	1998
4	FCX-Statesville Site	CERCLA	Informal, including Mediation, then Formal.	1997
4	GE/Shepherd Farm	CERCLA	Informal, including Mediation, then Formal.	1996
4	Beaunit Circular Knit & Dyeing	CERCLA	Informal, including Mediation, then Formal.	1996
4	Interstate Lead Company	CERCLA	Informal, including Mediation if it will not delay cleanup, then Formal.	1995
4	TH Agriculture and Nutrition Co.	CERCLA	Informal, including Mediation, then Formal.	1997
5	South Point Plant	CERCLA	Informal, including Mediation, then Formal.	1998
5	Prestolite Battery	CERCLA	Informal, then Formal, then Mediation for disputes involving accounting error or costs inconsistent with NCP.	1997

Region	Name	Type of Case	ADR Process	Year
5	SE Rockford Groundwater Contamination	CERCLA	Informal, including Mediation, then Formal.	1997
5	Sherwin-Williams Co.	RCRA, CWA EPCRA, CAA	Informal, then optional Mediation, then Formal.	1993
5	Midco I and II	CERCLA	Informal, including Mediation, then Formal.	1992
6	Borden Chemicals & Plastics, Geismar	RCRA, CERCLA, CAA	Informal, then Mediation, then Formal.	1998
6	Turtle Bayou	CERCLA	Informal, then Mediation, then Formal.	1998
7	Sunbeam Products, Neosho Plants	CAA	Informal, then Mediation if the U.S. consents (direct to judicial review if it does not).	1997
7	Doepke-Holliday	CERCLA	EPA Mediation for certain cost reimbursement disputes that arise among parties during the cleanup.	1996
9	Fresno Sanitary Landfill	CERCLA	Informal, including Mediation, then Formal.	1997
10	Blackbird Mine	CERCLA	Informal including “appropriate ADR mechanisms,” then Formal.	1995
10	Tulalip Landfill	CERCLA, CWA	Mediation for certain enumerated disputes and Informal for all other disputes, then Formal.	1998
10	City of Tacoma	CERCLA	Informal, then Formal, including mandatory Mediation.	1997
10	Teledyne Wah Chang	CERCLA	Informal, then Formal, with “ADR Albany Site procedures,” including but not limited to Mediation at any time agreed to by the parties.	1997
10	Gould	CERCLA	Informal, including Mediation, then Formal.	1998

SAMPLE CONSENT DECREES THAT INCLUDE ADR PROVISIONS

SOUTH POINT PLANT SUPERFUND SITE, LAWRENCE COUNTY, OHIO RD/RA CONSENT DECREE (1998)

XIX. DISPUTE RESOLUTION

63. a. Informal Dispute Resolution Period. The Parties to this Consent Decree shall attempt to resolve expeditiously any disagreements concerning the meaning, application or implementation of this Consent Decree. Any party seeking dispute resolution first shall provide the other parties with an “Informal Notice of Dispute” in writing and request an informal dispute resolution period, which shall not exceed thirty (30) days.

b. Employment of Neutral Mediator. Within ten (10) days of the filing of an Informal Notice of Dispute (or in the event of an alleged “force majeure” event within ten (10) days of EPA’s notification of disagreement pursuant to paragraph 61), either the United States or the Settling Defendants may, by providing notice in writing, request the employment of a neutral mediator to be selected in accordance with subparagraph 63(c). The United States and the Settling Defendants agree to such employment, if timely requested. Any mediation shall not last longer than forty-five (45) days from the filing of the informal notice of dispute (expiration of the informal dispute resolution period notwithstanding) or, in the event of an alleged “force majeure” event, forty-five (45) days from EPA’s notification of disagreement pursuant to paragraph 61, unless extended by written agreement of the United States and Settling Defendants. Any report, findings, recommendations, written records, or notes prepared by the mediator shall not be binding on any party and shall not be part of the administrative record or admissible in dispute resolution proceedings or any other legal proceeding. The Director, Superfund Division, Region V, and management for each Settling Defendant shall review any report, findings, or recommendations of the mediator, but the Director may not consider or rely solely on such report, findings, or recommendations in issuing a final decision on dispute resolution pursuant to subparagraph 65d.

c. Selection of Neutral Mediator Roster. Within forty-five (45) days after entry of this Consent Decree, Settling Defendants and the United States (after consultation with the State) shall submit to each other a list of at least three suggested mediators, who shall each have the qualifications of (a) demonstrated experience, (b) independence, (c) subject matter experience, and (d) lack of actual or apparent bias in general accordance with EPA guidance on the use of Alternative Dispute Resolution in Enforcement Cases. A description of the qualifications of a proposed mediator shall accompany the submittal. Settling Defendants and the United States shall, within twenty-one (21) days after receipt of a list of mediators, strike those names to which they will not agree. If necessary, additional names shall be submitted and considered, until a roster of at least two available mediators is agreed upon. If for any reason, at any time, a previously agreed upon mediator is unavailable, then the selection process shall be promptly reinstated so as to have at least two mediators readily available.

d. Appointment of Neutral Mediator. Upon the timely request of the United States or Settling Defendants for the employment of a neutral mediator in accordance with subparagraph 63b, a mediator shall be selected at random (e.g., by names being drawn blindly) from the available roster. The United States and Settling Defendants shall expeditiously enter into a written contract with the mediator for the provision of required services, including salary, terms of payments, each party's share of costs, and a confidentiality agreement. The contract shall include the following provision on confidentiality:

“In order to promote frank and productive discussion, the mediation process will be confidential. The parties, their representatives, and the mediator may not disclose information regarding the negotiations, including settlement terms, proposals, offers, or other statements made during the mediation process or negotiations, to third parties, unless the United States and Settling Defendants otherwise agree in writing. The mediation process and negotiations shall be treated as compromise negotiations under Rule 408 of the Federal Rules of Evidence or other applicable rules of evidence. The mediator will be disqualified as and shall not appear as a witness, consultant or expert in any pending or future action relating to the subject matter or mediation including actions between persons not parties to the mediation.”

64. If the dispute is not resolved within the informal discussion period under subparagraph 63a, any party may initiate formal dispute resolution by giving a written “Formal Notice of Dispute” to the other parties no later than the 15th day following the conclusion of the thirty-day informal dispute resolution period under subparagraph 63a. A party shall seek formal dispute resolution prior to the expiration of the informal discussion period under subparagraph 63a where the circumstances require prompt resolution.

65. Formal dispute resolution for disputes pertaining to the selection or adequacy of remedial design or remedial action (including the selection and adequacy of any plans which are required to be submitted for government approval under this Decree and the adequacy of Work performed) shall be conducted according to the following procedures:

a. Within ten (10) days of the service of the Formal Notice of Dispute pursuant to the preceding paragraph, or such other time as may be agreed to by the parties, the party who gave the notice shall serve on the other parties to this Decree a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis, or opinion supporting its position (hereinafter the “Statement of Position”), and shall provide copies of all supporting documentation on which such party relies.

b. Opposing parties shall serve their Statements of Position and copies of supporting documentation within twenty (20) days after receipt of the complaining party's Statement of Position or such other time as may be agreed to by the parties.

c. EPA shall maintain an administrative record of any dispute governed by this paragraph. The record shall include the Formal Notice of Dispute, the Statements of Position, all supporting documentation submitted by the parties, and any other material on which the EPA decision maker relies for the administrative decision provided for below. The record shall be available for inspection and copying by all parties. The record shall be closed no less than ten (10) days before the

administrative decision is made, and EPA shall give all parties prior notice of the date on which the record will close.

d. The Director, Superfund Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in subparagraph 65c. This decision shall be binding upon the Settling Defendants, subject to the right to seek judicial review pursuant to subparagraph 65e.

e. Any decision and order of EPA pursuant to subparagraph d shall be reviewable by this Court, provided that a Notice of Judicial Appeal is filed within 10 days of receipt of EPA's decision and order. Judicial review will be conducted on EPA's administrative record and EPA's decision shall be upheld unless it is demonstrated to be arbitrary and capricious or in violation of law.

66. Judicial dispute resolution for any issues not governed by the preceding paragraph may be initiated by the petition to the Court and shall be governed by the Federal Rules of Civil Procedure. Except as specifically provided in other provisions of this Decree, e.g., Section XIII, this Decree does not establish procedures or burdens of proof for such dispute resolution proceedings.

67. The invocation of the procedures stated in this Section shall not extend or postpone Settling Defendants' obligations under this Consent Decree with respect to the dispute issue unless and until EPA agrees otherwise. EPA's position on an issue in dispute shall control until such time as the Court orders otherwise in accordance with the provisions of this Section.

68. Any applicable Stipulated Penalties continue to accrue during dispute resolution, as provided in Section XX hereof. Settling Defendants may seek forgiveness of stipulated penalties that accrue during dispute resolution by petition to EPA and/or the Court pursuant to paragraph 70 below.

69. Upon the conclusion of any formal or informal dispute resolution under this Section which has the effect of nullifying or altering any provision of the RD/RA Project Plan or any other plan or document submitted and approved pursuant to this Decree, Settling Defendants shall submit an amended plan, in accordance with the decision, to EPA and the State within fifteen (15) days of receipt of the final order or decision. Amendments of the SOW as a result of dispute resolution proceedings are governed by Section VI above. Amendments of a plan or other document as a result of dispute resolution shall not alter any dates for performance unless such dates have been specifically changed by the order or decision. Extension of one or more dates of performance in the order or decision does not extend subsequent dates of performance for related or unrelated items of Work unless the order or decision expressly so provides or the parties so agree.

TURTLE BAYOU SUPERFUND SITE, LIBERTY COUNTY, TEXAS
RD/RA CONSENT DECREE (1998)

XIX. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

62. a. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of good-faith informal negotiations between the parties to the dispute. The period for good-faith informal negotiations shall not exceed 30 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party receives a written Notice of Dispute.

62. b. In the event that the parties cannot resolve a dispute by informal negotiations under Paragraph 62.a., the non-binding mediation provisions of this Paragraph and Paragraph 62.c. may be invoked by mutual agreement of the parties before invocation of the formal dispute resolution procedures of this Section.

62. c. Upon agreement to invoke the non-binding mediation procedures, all disputes among the parties may be presented to a mutually agreed-upon entity or individual for non-binding mediation. The period for such non-binding mediation shall not exceed 20 days from the conclusion of the informal negotiation period, unless this period is modified by written agreement of the parties to the dispute. The costs of the non-binding mediation services shall be paid on an equal basis between the parties involved in the dispute, unless another allocation for these services is mutually agreed upon by the parties.

63. a. In the event that the parties cannot resolve a dispute by informal negotiations or non-binding mediation under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 20 days after the conclusion of the informal negotiation or non-binding mediation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States pursuant to the notice provisions herein a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under paragraph 64 or 65.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall specify the EPA's position as to whether formal dispute resolution should proceed under paragraph 64 or 65. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 64 or 65, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 64 and 65.

64. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Superfund Division, EPA Region 6, or his/her delegate, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 64. a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 64.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 64. b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 20 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Superfund Division Director, or his/her delegate, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 64.a.

65. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 63, the Director of the Superfund Division, EPA Region 6, or his/her delegate, will issue a final decision resolving the dispute. The Superfund Division Director's or his/her delegate's decision

shall be binding on the Settling Defendants unless, within 20 days of receipt of the EPA's final decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph M of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

66. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 74. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

EXPLANATION OF TERMS

ADR PROCESS

Arbitration:

A process in which a neutral party considers the facts and arguments presented by parties in a dispute and renders a binding or non-binding decision using applicable law and procedures.

Convening:

The first step in a dispute resolution process, in which a neutral party explores with the parties whether they are interested in using ADR, makes a recommendation about the most appropriate way to proceed, and assists the parties in selecting a neutral.

Facilitation:

A process in which parties with divergent views use a neutral facilitator to improve communication and work toward agreement on a goal or the solution to a problem. The facilitator runs the process, helping the parties set ground rules, design meeting agendas, and communicate more effectively.

Fact Finding:

The investigation of issues by a neutral party who gathers information and prepares a summary of key issues. (Fact finding is often used as part of a negotiation process.)

Mediation:

A voluntary and informal process in which the disputing parties select a neutral third party to assist them in reaching a negotiated settlement. Since mediators have no power to impose a solution on the parties, they help disputants shape solutions to meet the interests and needs of all parties.

Mini-Trial:

A process in which the decision-makers for each side of a dispute hear a summary of the best case presented by the attorneys for each side. Following the presentations, the principals engage in negotiations, often with the assistance of the neutral party.

Neutral Evaluation:

An evaluation conducted by a neutral party who provides the disputants with an assessment of the strengths and weaknesses of each party's case and a prediction about the potential outcome of the case.

Partnering:

A collaborative process in which the participants commit to work cooperatively to improve communications and avoid disputes in order to achieve a common goal. Typically, a neutral helps the participants create a partnering agreement that defines how they will interact and what goals they seek to achieve.

Settlement Judge:

A judge appointed to assist the parties negotiating a settlement of a case. The settlement judge may provide a prediction about the potential outcome of the case, but does not try the case.

KEY TO ABBREVIATIONS

ACE

Army Corps of Engineers

ADR

Alternative Dispute Resolution

ALJ

Administrative Law Judge

AOC

Administrative Order on Consent

BRAC

Base Realignment and Closure

CAA

Clean Air Act

CAFO

Concentrated Animal Feeding Operations

CERCLA

Comprehensive Environmental Response,
Compensation, and Liability Act

CWA

Clean Water Act

DOD

Department of Defense

DOE

Department of Energy

DOJ

Department of Justice

EPCRA

Emergency Planning and Community Right-to-
Know Act

FIFRA

Federal Insecticide, Fungicide, and Rodenticide
Act

FOIA

Freedom of Information Act

IADRWG

Inter-Agency Alternative Dispute Resolution
Working Group

NEPA

National Environmental Policy Act

NPDES

National Pollutant Discharge Elimination
System

NPL

National Priorities List

OALJ

Office of Administrative Law Judges

OECA

Office of Enforcement and Compliance
Assurance

OPA

Oil Pollution Act

ORC

Office of Regional Counsel

OSRE

Office of Site Remediation Enforcement

PRP

Potentially Responsible Party

PSD

Prevention of Significant Deterioration

RCRA

Resource Conservation and Recovery Act

ROD

Record of Decision

RPM

Remedial Project Manager

SEP

Supplemental Environmental Project

SDWA

Safe Drinking Water Act

TSCA

Toxic Substances Control Act

UIC

Underground Injection Control